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HISTORY  
OF  
THE DEVELOPMENT OF  
CONSTITUTIONAL AND CIVIL LIBERTY

BEING  
A SERIES OF EIGHT LECTURES DELIVERED  
BEFORE THE POST-GRADUATE CLASSES OF  
THE UNIVERSITY OF GEORGETOWN

*Marlow* BY  
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WASHINGTON, D. C.  
W. H. MORRISON'S SON  
1898



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## P R E F A C E

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THE following lectures, delivered before the Post-Graduate Classes of the University of Georgetown, in the winters of 1895-6 and 1896-7, are not intended to be a treatise on the subject with which they deal, but simply what they purport to be, a series of lectures on the subject, addressed to an intelligent class of young men, for the purpose of stimulating inquiry and directing attention to the long contest through which our precious heritage of constitutional and civil liberty has been secured. If, in acceding to a request for their publication, I can reach others than those to whom they were addressed, and I can be instrumental thereby, even in the slightest degree, in promoting a love of our free institutions and a patriotic desire for the preservation and perpetuation of our system of constitutional liberty, the publication will not have been in vain.





# HISTORY OF THE DEVELOPMENT OF CONSTITUTIONAL AND CIVIL LIBERTY

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## LECTURE I.

A GENERAL SKETCH OF THE RISE AND PROGRESS OF  
CIVIL LIBERTY, AND OF THE GREAT PERIODS  
OF ITS DEVELOPMENT IN THE  
ANCIENT WORLD.

THE course of the world's history, if I may borrow a favorite phrase from the creed of Zoroaster, manifests an endless war between Ormuzd and Ahriman, between the powers of light and the powers of darkness, between the spirit of good and the spirit of evil; and, under proper limitations, the Zoroastrian idea does not differ substantially from the doctrine of our Christian Philosophy. There is a never-ending war between good and evil, between man's higher and man's lower nature, between the agencies that would raise us to the stars and those that would draw us down to hell; and scarcely is this contest less strikingly marked in the affairs of civil life than in the domain of religion, where we most frequently hear of it. The war between principle and privilege, between human right

and the tyranny that would destroy God's last, best gift to man, however much abused, the freedom of the human will, is still the war of Ormuzd and Ahriman, the war of good and evil. Truth and error—truth, one, immutable, and eternal—error, manifold and hydra-headed, ever changing and ever unstable—are matched in conflict against each other in political economy equally as in religion.

By political economy here I mean all the science and art of government; and political economy, so understood, is a branch of the science of Ethics, which, as every graduate of this University will instantly recognize, must depend for its efficacy upon the sanction of intellectual philosophy and upon the dogmas of natural and revealed religion. In recalling this truth to your minds, I do not desire to ignore the fact that the founders of our American political system sought to draw a broad line of demarcation between the domain of religion and the domain of politics in the administration of government. But this cardinal feature of our institutions you will find not to be inconsistent with the fact that, in the ultimate analysis, both true theology and true political economy are based upon precisely the same underlying principles.

Let us examine briefly the forces that are engaged in the struggle which we have indicated as in existence from the beginning of the organization of human society.

Aristotle, probably the greatest philosopher of all time, distinguished three classes or categories of governmental system: monarchy, aristocracy and democracy—or, government by one man, govern-

ment by a class or a select few, and government by the people of themselves; and the classification remains theoretically as correct to-day as when the famous Stagyrte first enunciated it in the Lyceum of Athens. It has been asserted that in our present age we have successfully blended the three systems in one under the form of Constitutional and Representative Government, and the assertion is to a certain extent well founded; but the underlying principles of the several systems are still fundamentally and radically at war with each other as much as in the days of Aristotle.

It used to be assumed by those who wrote in favor of the theory of the so-called "divine right" of kings to rule independently of their people—there are no such writers now anywhere among the civilized nations of the world—that Monarchy is the legitimate successor of the patriarchal system, which was beyond all doubt the primitive and original system upon which human society was first organized, and which was no more than a mere enlargement of the theory upon which the family was constituted. And yet it has been conclusively demonstrated by all that has come down to us of the early annals of our race, that the establishment of monarchy was effected only by the violent subversion of the patriarchal system, and that it has been built upon the power of brute force in direct antagonism to the principle of love and affection upon which the patriarchal system was founded.

The Monarchy of Aristotle's category was an absolute despotism. The essence of all monarchy is absolutism. Its type in his day was the great Asi-



atic Empire of Persia, the bitter and uncompromising opponent of Republican Greece. Although it has now been discredited as a relic of barbarism by all the civilized nations of the world, two-thirds of the inhabitants of the globe yet live under its dominion and adhere to its theory; and three of the great religious systems of the world, Brahmanism, Buddhism and Mohammedanism, seem to be irretrievably chained to its destinies. Degrading as it is to our sense of manhood from our present standpoint, yet even this type of monarchy is not without its advantages; and there are occasions when, in the midst of the turmoil that sometimes unduly characterizes our republican freedom, we are tempted to wish for "a strong hand in a blatant land."

Aristocracy has found its strongest defence and fullest justification in the fact, which is undoubtedly a fact, that, whatever theories we may weave, whatever forms we may establish, all government at last, whether it be designated as monarchical, or as aristocratic, or as republican, is and always must be administered by a few select persons, presumably those most competent for the purpose; and the aristocratic or oligarchic system merely gives substantial shape and formal recognition to the actuality of existing conditions. Even representative government, when analyzed, is found to be no more than a phase of aristocracy; and it is a fact that in our own constitutional republican system, which we are sometimes pleased to designate as a democracy, the aristocratic idea is found very deeply entrenched. The old Roman Commonwealth during the greater

part of its term of existence, and several of the Greek Republics, were aristocracies; and the aristocratic theory gave strength and stability to the free institutions of Venice and Holland when Venice and Holland were the most prominent of modern Republics. The vice of the system is that it seeks to perpetuate the administration of government in a class, when nature refuses to perpetuate in that class the sentiment of honor, the spirit of integrity, and the faculty of administration.

Democracy rests, as the best reason for its existence, on the equal responsibility of all men individually to their Creator; on the freedom of the human will, which I have taken occasion to characterize, in accordance with the dictates of the highest philosophy, as God's last and best gift to man; and on the equality before His tribunal which that freedom necessarily implies. That in this sense all men are created free and equal is not only an axiom of our Declaration of Independence, but likewise a fundamental dogma of our Revealed Religion. For if there is any one feature of the Christian Religion which is more distinctly defined and more urgently insisted upon than all others, it is the principle that individual man must stand or fall by his own deserts, must be judged by his own individual conduct, must answer before the judgment seat of God alone for himself, and is a perfectly free agent for the working out of his own salvation. The Fatherhood of God and the Brotherhood of Man are the two cardinal ideas of Christianity, distinctly so stated by its Divine Founder himself; they are likewise the cardinal ideas of Democracy,

however they may be, on occasions, obscured by extraneous and irrelevant considerations. The true theory of Democracy is that individual man should be let alone to work out in his own way with his brother man the high destiny which the Father of all mankind has equally reserved for all his children. Upon this theory Christianity and Democracy are one.

But in its practical application Democracy has its vice, as well as Monarchy and Aristocracy; and that vice is to be found mainly in the fact that in its appreciation of number it often ignores intelligence, and that the voice of the majority, by which it assumes to be governed, is not always the voice of the greatest wisdom. And yet notwithstanding this drawback, and notwithstanding the fact that in the long and dreary history of human frailty government by democracy has been the exception, rather than the rule, in the management of human affairs, it should be noted that to the democracies of the world we owe nearly all that is best in our modern civilization,—to the Democracy of Israel our monotheistic Religion; to the Democracy of Athens our literature, art, science, and philosophy; to the combination of Aristocracy and Democracy that constituted the Roman Commonwealth, and mainly to its Democracy, the best jurisprudence which the world has ever known; to the Italian Republics of the Middle Ages the preservation and the Renaissance of Civilization, when Civilization was engaged in a death struggle with Teutonic Feudalism.

It will be noticed that in the categories of Aristotle there is no mention of Constitutional or Rep-



representative Government; and it has often, therefore, been assumed by writers upon the subject that this device of ours, now universally adopted by all the civilized nations of the world, and wherein it has been sought, with more or less success, to combine the monarchical, the aristocratic, and the democratic idea, is of purely modern origin. It is very true that neither in the Roman Commonwealth nor in the Republican States of Greece do we find much trace of the Representative system or of Constitutionalism, as we now understand those terms. Yet the terms themselves come to us immediately from the language of Rome, and more remotely from that of Greece; and with the words there must have existed in both countries something of the fact which gave rise to the idea. And we shall find that in both the germ existed of Constitutional and Representative Government, although in a rude and undeveloped state.

The Commonwealths of Rome and Greece were, in their origin and early development, no more than mere municipal organizations,—small cities, in fact, with limited adjacent agricultural territory; and their government originally was not substantially different from that of our old townships in New England, where all freeholders met in council to take measures for the general welfare. In them there was no occasion for the establishment of the complex system of check and balance that characterizes our modern device of Constitutionalism, and its invariable accompaniment, Representative Government. And yet the Institutions of Solon and Lycurgus in Greece, of Minos in Crete, of Pythag-

oras at Crotona, and of the Twelve Tables at Rome, not to mention various others among the Hellenic States, were not merely attempts to establish codes of jurisprudence, as is generally supposed, but likewise efforts to establish something in the nature of Constitutional Government, for the perpetuation of Civil Liberty.

Various English writers would have us look for the origin of our Civil Liberty, and for the germs of the governmental institutions by which it has been secured, to the brutal savages who swarmed from North Germany and Scandinavia in the Fifth and succeeding centuries of our Era to overthrow in blood and slaughter the civilization of Rome. Some of them would seem to limit the inquiry to the institutions of that most specially brutal and bloodthirsty of all the Teutonic tribes, the Anglo-Saxons, who overran and conquered Britain and gave it the name of England. Others again, with a strange inconsistency and a narrow spirit of insular bigotry that finds no parallel outside of China, regard England as the immemorial home of Civil Liberty through all its manifold mutations of British, Roman, Anglo-Saxon, Danish, and Norman domination. In this category is found even such a writer as Sir William Blackstone, the great Commentator on the Common Law of England. And in the same line are those English writers who are unwilling to admit that the introduction of Christianity into Britain was accomplished through Rome or by any remote successors of the Apostles, or even by the Apostles themselves, and who claim a peculiar and early brand of the Christian Religion as having been

established in the then remote island, not by an Apostle, but by one who might be called a companion of Christ, Joseph of Arimathea.

It must be admitted that for the claim that Civil Liberty originated in North Germany there is some warrant in the writings of one of the most cross-grained and ill-natured of Roman historians. Tacitus, in his work, *De Moribus Germanorum*, has nothing but eulogy for the institutions of the Teutonic Barbarians of his day, and evidently labors to establish a sharp contrast between their simple manners and free mode of life, on the one hand, and the corruption and degradation of the Roman People under the Emperors, on the other. But the eulogy of such a writer as Tacitus, himself the brutal apologist of the crimes of Nero against Christianity and the base reviler of a religious system of which either he was grossly ignorant, or which he knowingly and purposely maligned, cannot, under the circumstances in which he wrote, be regarded as proof of anything. Of all the historians of Rome, the demand seems to be made upon us to believe him the most virtuous; the circumstances show him conclusively to have been the most malignant of hypocrites.

But assuming all that Tacitus says of the Germans to be true, he presents to us a race of savages, like the Nomads of the Arabian Desert, the Mongolian Hordes, or the Red Indians of North America. These are all of the same stamp, of simple manners, and instinct with the spirit of freedom, as they understand it. But we presume that it is not necessary at this day to show the wide

chasm of distinction that exists between the so-called freedom of the Nomads and our theory of Civil Liberty. The freedom of the Nomad is lawlessness; Civil Liberty is freedom regulated by law. The lawlessness of the Arabian, Mongolian, or American savage is as far removed from Civil Liberty as is the paternal despotism of China, and more utterly incapable of begetting it. Savagery cannot be the parent of Civil Liberty; otherwise we would long ago have had on the plains of Arabia the grandest of Republics, and the savage Iroquois would have been the founder of a noble American Commonwealth. The savages of North Germany brought nothing with them from their country but an insatiable thirst for blood, and their conquest of the Roman Empire, as we will see, instead of promoting the cause of Civil Liberty, was the most dangerous and the most systematic attack upon that cause in all the history of the human race.

To a higher and nobler source than the savages of North Germany, to a greater and better source, even, than the extreme civilizations of Greece and Rome, is due the origin of Civil Liberty and of Constitutional Government. The first Constitution was promulgated and the first Republic was proclaimed amid the thunders of Sinai. In the Commonwealth of Israel, first among all the nations, were the principles of Civil Liberty established, and in the Commonwealth of Israel we find the basis, not alone of the religious system which we now profess, and which so largely constitutes what we call our civilization, but likewise of the political and social institutions which go to make up our Civil Liberty.



Let us consider the conditions for a moment.

Despotic monarchies in Egypt and Asshur and Babylon, despotic monarchies in Hindustan and China, despotic monarchies apparently on all the shores of the Mediterranean, dominated the civilization of the world in the Sixteenth and Seventeenth Centuries before the Christian Era—despotism and barbarism divided the world between them—and the dignified freedom of individual manhood, as well as the simplicity of the true primeval religion, would seem to have vanished from the world, when “a dreamer of dreams” in the Land of Midian, an exile from Egypt and a fugitive from Egyptian justice, yet one who had been the leader of Egypt’s armies, the adopted son of Pharaoh’s daughter, and probably, therefore, the heir apparent of Egypt’s Queen, was divinely commissioned to restore alike religious truth and political freedom, both the civil and the religious heritage of our humanity. The revolt of Israel against Egypt was not only a protest against the peculiarly corrupt polytheism of the Land of the Nile, but equally and perhaps even more emphatically a protest against absolutism in government. It was, in fact, the first declaration on record of the rights of man.

The Law that was promulgated upon Sinai was not, as will readily appear from the Sacred Books themselves, exclusively a code of religious belief, such as it is commonly understood to be, but a civil code likewise for the political guidance of the People of Israel. Then it was that *Law* commenced to be. Then it was that the *People* first commenced to be spoken of in connection with the Law and as



governed only by Law. Before that time the transactions of the world were the transactions of its petty tyrants. The People had no part in them but slavishly to obey the behests of their rulers. Before that time there was no Law but the arbitrary will of rulers wielding the despotism of the sword, or the still worse despotism of pagan superstition. The Institutions of Moses were the substitution of a government of law and by law for the personal government of despotic monarchy, and the Commonwealth which he then established was a democratic Federal Republic, the first Republic of the world, and the only government, it may be added, that was ever established on earth for which there can be said to have been the immediate sanction of Divine authority. And the sacred penman, who gives us the account which we have of this Republic for the term of about five hundred years of its existence, takes occasion repeatedly to assert the free and liberal character of its political institutions, for he seems to be fond of repeating the statement that "in those days every man did that which was right in his own eyes," and he gives as a reason for this the fact that "in those days there was no king in Israel."

Israel, in fact, under the Institutions of Moses, was a thorough Democracy, as any reader of the Books of Exodus, Joshua and the Judges can easily see. It has sometimes, it is true, been designated as a Theocracy, and regarded as a thing apart and peculiar, unlike anything else of the kind that has ever appeared in the world. This is a very grave mistake. As a characterization of the government

of Israel as a government of the People by God alone, their only king, through the means of the law which he promulgated for the purpose, the term Theocracy is entirely correct. But as conveying the idea which the word is generally intended to convey—that is, a government of the people by the priesthood engrossing the management of all affairs, civil and religious, into their own hands—the term was never more erroneously applied. Never was there less justification for any assertion than for the statement that in this sense Israel was a Theocracy.

Of the twelve Judges of Israel, so-called—though it would seem to be more appropriate to designate them as Presidents of the Hebrew Commonwealth—who appear to have administered the affairs of the Israelite Federal Union during the Golden Age of the existence of the Commonwealth, not one was of the priestly race; and there is not the slightest trace in the records of the nation of any priestly domination during all that period, except at the very close of it, when, as the result of bribery and corruption, and apparently even as the result, direct or indirect, of such priestly domination, the Commonwealth was hastening to its ruin. If there is anything peculiarly and conspicuously absent from the history of the Israelite Commonwealth established by Moses and Joshua, it is all indication of the theocratical idea and of priestly domination.

The story of the downfall of the Commonwealth of Israel throws a flood of light upon the character of its institutions, and incidentally upon the general subject of our discussion. Let us turn for a moment to the author who narrates it in the First

Book of Samuel, sometimes also designated as the First Book of Kings, and who is generally believed to have been the great High Priest, Prophet, and Judge of Israel, the illustrious Samuel, a true patriot, who mourned the decadence of the free spirit of his people, and who would have prevented the result, if he could, although it is not entirely certain that he did not himself contribute to that result by his weak indulgence towards his sons. Here is the story :

“ And it came to pass that, when Samuel was old, he made his sons judges over Israel. And they walked not in his ways, but turned aside after lucre, and took bribes, and perverted judgment. Then all the elders of Israel gathered themselves together, and came to Samuel in Ramah, and said unto him, ‘ Behold, thou art old, and thy sons walk not in thy ways ; now make us a king to judge us like all the nations.’ But the thing displeased Samuel. And Samuel prayed unto the Lord ; and the Lord said unto Samuel : ‘ Hearken unto the voice of the people in all that they say unto thee ; for they have not rejected thee, but they have rejected me, that I should not reign over them. Howbeit yet solemnly protest unto them, and show them the manner of the king that shall rule over them.’

“ And Samuel told all the words of the Lord to the people that asked of him a king. And he said : ‘ This will be the manner of the king that shall rule over you. He will take your sons, and appoint them for himself, for his chariots, and to be his horsemen. And he will take your daughters to be cooks and bakers. And he will take your fields,

and your vineyards, and your olive yards, and give them to his servants. And he will take your goodliest young men, and put them to his work. And ye shall be his servants. And you shall cry out in that day because of your king which ye shall have chosen; and the Lord will not hear you on that day.'

"Nevertheless the people refused to obey the voice of Samuel; and they said: 'Nay, but we will have a king over us.' " (1 Samuel, chap. 8.)

The relative merits of Monarchy and Democracy could not have been better or more pointedly stated than they have been here upon the authority of Jehovah himself. For it is plain that it is not the personal character of the rather worthless individual who was selected to be the first king of the Israelite Monarchy that is in question, but Monarchy itself as a governmental institution. And it is also plain that the Commonwealth was the reverse of all that the Monarchy was threatened to be; that it was a government of freedom and of law, in contradistinction to the arbitrary lawlessness of Monarchy.

The Hebrew Commonwealth, in fact, was a democratic Federal Republic, composed of twelve equal and co-ordinate states, each independent in the management of its own local affairs, each with its own autonomy, yet all constituting but one people and one nation Israel for the common defense and the general welfare. Curiously enough, it was the prototype of our own American Federal Republic; and before our own no other purely Federal Republic ever existed than the Commonwealth of Israel.



Holland was not such when the States of Holland were independent; nor was the Hanseatic League; nor were the States of Switzerland before the present century; nor were the States of Greece in ancient times. Republican Leagues there have been, not infrequently; but it may be asserted with positiveness that, before the establishment of our American Federal Constitution, the only exemplification of the Federal Republican principle in government was the Commonwealth of Israel. And how much the Federal Republican principles in government means to the cause of Civil Liberty we will have occasion to see in the development of our subject.

The spirit of freedom which characterized the Israelites of the Commonwealth is sufficiently indicated in the statement, which we have already cited, that "in those days every man did that which was right in his own eyes," and that there was then no king in Israel to curb or restrain their freedom of action. And yet the fact that the Law was always appealed to, and that the Law was ever present as a guide to their consciences, is sufficient to show that the freedom which they possessed and exercised was not the unrestrained licentiousness of savages, but true Civil Liberty, freedom regulated by Law.

I have dwelt upon this matter for the purpose of showing that to a higher and nobler source than the Anglo-Saxon savages, who swarmed from the fens of Jutland and Friesland to establish their dreary barbarism upon the ruins and desolation of the Roman Civilization of Britain—to Jehovah himself, and to his chosen Legislator Moses on Mount Sinai



—is due the origin of Constitutional and Civil Liberty. The supremacy of Law, the fixity of certain fundamental first principles in government, and the freedom and equality of all men before the Law and with responsibility only to the Law, which are the essential features of Constitutional and Civil Liberty, were exemplified, as we have seen, first on earth in the Commonwealth of Israel.

It is to the credit of the sturdy common sense of the Puritans of New England, as well as of those who remained in Old England and established the short-lived Commonwealth that perished under the dictatorship of Oliver Cromwell, that they never prated of “ancient liberties” of the English People, which never at any time had existence, but confessedly and candidly drew their inspiration and their aspirations for republicanism from the Mosaic Institutions and the example of the Commonwealth of Israel; and to that Commonwealth they invariably appealed as their model. So did John Calvin in Geneva; so did John Knox in Scotland. It does not matter here that the inspiration was tainted by a narrow bigotry and an insane fanaticism wholly foreign to the spirit of freedom which they invoked. What it is desired to emphasize is that it never occurred to them, with the dishonest disregard of truth which characterizes so many of the historians of England, to deduce the principles of Civil Liberty from Teutonic and Scandinavian savages.

After a duration of about five hundred years the Hebrew Commonwealth fell, not from the attacks of external foes, but from bribery and corruption at home, the same causes which in all ages have proved

fatal to republican institutions. The Israelites were no longer equal to the high ideal of Democracy as established by Moses, and they sank to the level of the surrounding petty monarchies. And yet the principles of Civil Liberty never wholly perished from the hearts of Israel, any more than did the true religion; although it was frequently found necessary, in the counsels of Divine Providence, to remind them of both by suffering and chastisement. Even under their kings—good, bad and indifferent as those kings were, and they were usually bad or indifferent—the law was always more or less of a constitutional restraint upon the arbitrary power of the monarch. And when the monarchy was swept away in the overwhelming tide of Oriental Conquest, and Israel was permitted, after the termination of its Captivity, to reconstruct to some extent its political and social institutions, it returned to a modified form of democracy, under the suzerainty of the Persian Empire. But it was fated a second time to sink under the weight of a monarchy, and then to ruin.

The republican institutions of the Commonwealth of Israel were not without their influence on their near neighbors, the Phœnicians of Tyre and Sidon and Aradus. Upon the advent of the Israelites in the Land of Canaan, the Canaanites were all governed by petty kings, and monarchical government seems to have been universal among them. The Phœnicians were only a branch of the Canaanites, and their traditions represent them also as being at this time under the sway of monarchs and with forms of government not different from those of

the nations around them. Soon after, however, they are found with republican forms of government, and it can scarcely be doubted that the republicanism of Phœnicia was the direct result of the influence of the republicanism of Israel. Singularly, too, it was sought in the republicanism of Phœnicia to imitate likewise the Federal principle which constituted one of the peculiar features of the Commonwealth of Israel. And so we find that the three great Phœnician Cities of Sidon, Tyre and Arad established a Federal Capital, by the name of Tripolis (or the Triple City), as a place for the meeting of their delegates, and a seat of government for the management of the affairs which they had in common.

From Tyre and Sidon and Arad republican institutions were carried to Carthage and Utica in North Africa, to Tartessus and Gades in Spain, and to all the Phœnician settlements wheresoever situated. In fact, wherever we find the trace of Phœnician influence in the ancient world, we find evidence of the establishment of republican institutions. Unfortunately, the greater part of the history of Phœnicia and of her colonies, including Carthage, the most famous of them all, is lost to us; and the insufficient and unsatisfactory information which we have of their political institutions has been derived to us in great measure from their rivals and their enemies, and through the means of writers who seem to have been unable correctly to estimate their true character. But no less eminent a critic than the sagacious Aristotle himself tells us that those institutions were greatly superior to those of the

other nations with which he was acquainted, including the republican States of Greece. Wherein the superiority consisted, he does not tell us. But when we consider that Phœnicia and Carthage, in the time of their greatness, would seem to have been comparatively free from the frequent political convulsions to which the Grecian States were liable, we may suspect that there was an element of Constitutionalism in their institutions, probably derived from the Hebrew Commonwealth, which gave them a degree of stability unknown in the affairs of the Hellenic States, and that it was this element which fixed the attention of the great Athenian Philosopher.

The beacon fires of Civil Liberty, lit first upon the mountains of Israel, and thence spread along all the coasts of Phœnicia and wherever the Phœnician merchantman went, soon found fitting response along the classic headlands of Greece. Early in their mediæval history, soon after the old Achæan Commonwealths, to which Homer had sung his immortal rhapsodies, had passed away, and Hellenism, the second Greece, our Greece of classical renown, was beginning to feel its strength, under the influence, no doubt, of the Phœnician example, the Cities of Greece became animated with the spirit of freedom. Thebes, first of all, the most distinctively Phœnician City in Greece, the home of Cadmus and literature, and soon afterwards Athens and Argos, became Republics; and these, the three greatest cities of the land, were soon followed by all the smaller towns and cities; and republican institutions became universal, and monarchy an obsolete thing, throughout the confines of the Hellenic Race. The



republicanism of some of them, in the first instance, was more or less oligarchic or aristocratic in character; in the great majority of them it ultimately became a pure democracy, but apparently without much of the constitutional stability that characterized the institutions of Carthage and Phœnicia.

The Republics of Greece were all small states. They were merely cities, with small adjacent and appurtenant agricultural territory. The expressions *City* and *State* were practically synonymous in Greece, as well as subsequently in Rome; and the very terms, which have become common with us for the designation of broader and more extensive rights—political freedom, civil liberty, the freedom of the citizen—having reference, as they do, to the Greek *πολις* and the Latin *Civitas*, both meaning the same thing, the City—show us how identical in meaning were originally the ideas of liberty and citizenship as the prerogatives of the inhabitants of cities. And we may note here a curious fact, quite apparent to the careful student of history, yet wholly inconsistent with an idea that has been frequently entertained and expressed, that it is by and through the inhabitants of cities, and not by agricultural communities, that the principles of Civil Liberty have in general been propagated and perpetuated. From this statement we might except the land of the origin of Civil Liberty, the Commonwealth of Israel; and, in modern times, the heroic Cantons of Switzerland. But in all other instances, both ancient and modern, it is the Cities, and not the agricultural communities, that have always led in the contest for Civil Liberty.



The Grecian States, as already indicated, while republican in form, differed greatly in the character of their republicanism. Some were aristocratic and some democratic, and some were sometimes one and sometimes the other. But whether aristocracies or democracies, they seem to have been wanting in some of the elements of stability that appear to have characterized the Phœnician institutions. Certainly they were wanting in that sense of individual liberty and personal freedom which we in modern times regard as essential to all republican institutions; for State socialism in the Greek Republics was almost as restrictive of individual freedom as was the monarchy which they superseded and antagonized. And the Hellenic States likewise were wanting in what we understand as Constitutionalism; although the Institutions of Solon and Lycurgus, as well as those of Minos and Pythagoras, seem to have been intended to be something more than mere codes of law, and to have been in fact designed as schemes for the establishment of something like constitutional limitations upon political authority.

Where population was comparatively small, as it was generally in the Grecian States—for even the great leading cities of Athens, Thebes, Sparta, Corinth and Argos, were insignificant in population as compared to our great modern cities, and even to some of the ancient cities of Egypt and Asia—and the facilities were great for all citizens to be assembled in town meeting, there was no apparent necessity for recourse to the device of representative government. Moreover, the theory of representation

in government is, after all, only a phase of the aristocratic principle; and the tendency of the Hellenic mind was always towards unlimited and unfettered democracy, although it was democracy, as has just been stated, of a socialistic character.

Then the Federal principle, which has come with us to be so vital a factor in the development of Civil Liberty, seems never to have taken root in Greece, notwithstanding that there was abundant opportunity for it, and that on two distinct occasions it was sought to give it effect in the politics of the country. Alliances and confederations were frequent enough among the Hellenes, and a sentiment of united nationality was often sought to be created by the wisest and greatest of Grecian statesmen. This sentiment found its most successful expression in the establishment of the Olympian and other games, at which it was sought periodically to assemble the best elements of the Hellenic Race from all the regions peopled by the Hellenes. But only on two occasions was there any well-defined attempt to establish a system of Constitutional and representative government in Greece on the lines of Federalism; and, singularly enough, one of these occasions was towards the beginning and the other towards the close of Hellenic history. The first was in the establishment of the Amphictyonic Council, and the second in the formation of the Achæan League.

Of the former of these, the Amphictyonic Council, the scope and functions are not as well known as might be inferred from the large space which it occupied in public affairs at a certain period of

Hellenic history. In fact, we rarely or never read of it in Greek writers, except at the period mentioned; and except at this same period, it does not seem to have ever entered as an active element into Grecian politics. And yet it seems to have been quite an ancient institution, its establishment dating back almost to prehistoric ages, certainly to a very early epoch of Mediæval Greece. Its founder, Amphictyon, from whom it received its name, is presumed to have been a King of Thessaly, and to have been the contemporary of the Spartan Lawgiver Lycurgus, of Iphitus of Elis, the originator or restorer of the Olympian games, and of Diognetus, Archon of Athens, who is supposed to have fashioned to a very considerable extent the civil polity of the Athenian Republic (about B.C. 884).

One, at least, of its purposes appears to have been the guardianship of the national religion of Greece, and especially of the sacred shrine of Apollo at Delphi, as a bond of common unity. But the anthropomorphism of Greece never proved to be a bond of unity for the Hellenic Race. The Council is supposed to have been composed of delegates from all the States of Greece, and to have met, or to have been intended to meet, annually at the Pass of Thermopylæ. But history does not record its meetings, if they were continued to be held after the first patriotic impulse for its establishment had been spent, which is exceedingly doubtful, except on rare occasions, and then without definite result for the general welfare. Once, and once only, does it appear to have taken an active part as a great factor in Hellenic politics, and that was when

Philip of Macedon threatened the subversion of the liberties of Greece. It then came forward as the representative of Greek nationality, with what result we well know. It was measurably, and yet not entirely, successful in checking the ambitious purposes of that unscrupulous and energetic monarch. But strange as it may seem, it makes no appearance at all on the stage of Hellenic history, when Philip's more enterprising and more daringly successful son, Alexander the Great, made himself master of the destinies of Greece, preparatory to making himself master also of the destinies of Asia. And yet Alexander, too, had recourse to a Council of the Grecian States, held at Corinth,—a Council necessarily of a Federal and Representative character,—to commission him as Commander-in-chief of the Grecian forces with which he intended to invade and conquer the great Empire of Persia.

The second occasion on which it was sought to give effect to the Federal and Representative principle in government by the Hellenic States was when the Achæan League illumined, as with a crimson glory, the sunset of Hellenic greatness. By the Achæan League, designed by the illustrious Aratus of Sicyon, it was sought to combine the Hellenic States in a Federal organization for the preservation of their partly recovered liberties against the continued encroachments of the successors of Alexander on the throne of Macedon, to which it offered a brave and partially successful resistance. But it was not greatly more than a patriotic confederation, which, although it checked the power of Macedon, was soon compelled to submit



to the all-conquering arms of Rome, and thereupon was dissolved forever.

Influenced by the examples of Phœnicia, Greece, and Carthage, and borrowing especially from the last-named State much for which no sufficient credit has ever been given, Rome arose on her seven hills, repudiated monarchy, established republican institutions, and entered upon her wonderful career for the conquest of the world for herself and for Civil Liberty,—two purposes, in her opinion, not at all inconsistent with each other. And it must be admitted that even now, as we look back from the impartial standpoint of our Nineteenth Century, the domination of Rome over the nations was distinctly a step in advance for the cause of Civil Liberty, as well as, in general, for the cause of human civilization. The story of Rome is well known to you; and you can readily infer from it how true it is, despite many drawbacks, that the Roman civilization was one of progress for Civil Liberty. Certainly never before, since the Hebrew Commonwealth fell, was the combination of order and good government with the development of human freedom so distinctly felt to be the public policy of the civilized world as when Rome held dominion over the nations of the great Mediterranean Basin and along the shores of the Atlantic Ocean.

Wherever she came, Rome proclaimed freedom; and the proclamation was not, as the thoughtless or flippant might infer, a mockery or a meaningless thing. Making all due allowance for the measures which she felt herself compelled to take in order to enforce her own supremacy, which, although some-



times perhaps harsh and severe—for all conquest is necessarily to some extent harsh and severe—were never tainted by the cruelty which disgraces the annals of all preceding nations, not even excepting Greece, Rome everywhere, and as a general policy, allowed and fostered local liberty, and in course of time practically extended the benefit of Roman citizenship to all the people of the Roman world. Even after the Roman Republic had been converted into the Roman Empire by that greatest of all the assassins of Civil Liberty, Julius Cæsar, the Empire did not wholly destroy that Liberty. Indeed, strange as it may seem, the scope of free institutions was in some respects rather enlarged than curtailed by the Empire,—a result for which the credit is mainly to be given to that most wonderful element of human civilization, the noble jurisprudence of Rome. Moreover, although the Roman Republic had been subverted, and the chief of the army had usurped the supreme power in the State, it is yet a fact that no Roman Emperor ever sought to govern except through the apparent instrumentality of the ancient republican institutions; and the Senate remained, under the Empire as in the Republic, the organ of government for the enactment of laws and the regulation of the State. As we might now phrase it, the Emperor was merely the chief executive officer of the State, while the laws were supposed to be made by the Senate. This was, it is true, a fiction, or generally so; although there were, in fact, occasions during the period of the Empire when the Senate actually asserted and made good its authority. But even the fiction demonstrated

the respect for Civil Liberty imposed upon the Emperors by the public sentiment of the time.

Israel, Phœnicia, Carthage, Greece, Rome—these were the five great nations of the ancient world that originated and developed the principles of Civil Liberty in the ancient world, in antagonism alike to the arbitrary despotism of the great Oriental monarchies and to the essential principle of monarchy itself, and to the lawless savagery of Teutonic, Tartar, Arab, and African barbarism. There was civilization in Egypt, in Asshur, in Babylon, in Ancient India, in Ancient China: there were both civilization and Civil Liberty in Israel, Phœnicia, Carthage, Greece, and Rome. Elsewhere in the ancient world there was neither civilization nor civil liberty, nor any possibility of evolving either from the general barbarism without extraneous assistance—for never yet has civilization of any kind been evolved from barbarism without extraneous assistance. What the Latin Poet has said of the descent of his hero Æneas to the infernal regions is greatly more true of the state of intellectual and moral degradation consequent upon the lapse of man beyond the confines of civilization:

*Facilis descensus Averni.*

Sed revocare gradum, superasque evadere ad auras,  
Hic labor, hic opus est.

It is easy for man to lapse into barbarism. He has only to cut himself off from intercourse with civilized society. It has never yet happened in all the history of humanity that he has been able to retrace his steps and to recover the Civilization

which he has lost, except through the pursuit of him or of his posterity by that Civilization. By the barbarism and the savagery into which he may have degenerated he may have gained a certain kind of freedom from the restraint which civilized society imposes upon him; but that savage freedom is as much akin to true Civil Liberty as the ape is to the human being. It is merely a travesty of Civil Liberty without the remotest possibility of being transformed into it. The essence of barbarism is lawlessness; the essence of Civil Liberty is Law. How far the two are radically incompatible needs no elaboration. Whence we derive our Civil Liberty is, therefore, apparent.

## LECTURE II.

A SKETCH OF THE GENERAL DEVELOPMENT OF CIVIL  
LIBERTY IN MODERN TIMES.

It is a curious fact that, separated from each other by intervals of about fifteen centuries each, three great events of transcendent importance in the history of Civilization stand out prominent beyond all others in the annals of time, and these three great events are the three cardinal epochs in the development of the principles of Civil Liberty.

About fifteen centuries after the Dispersion of the Noachidæ from the Plains of Shinar, or, as we might perhaps say, after the appearance of Civilization in the lower part of the great Mesopotamian Valley, the great movement occurred which is known to us as the Exodus of Israel from Egypt, which was the first protest, not only of monotheistic truth against the corruptions of polytheism, but likewise of republican principle against the licentiousness of arbitrary monarchy—a movement which, as we have seen, eventuated in the establishment of the first government of law known to the records of our race in opposition to the governments of the sword which then everywhere dominated the world. About fifteen centuries later the Divine Teacher of Nazareth preached the New Dispensation of the Fatherhood of God and the Brotherhood of Man, and soon that preaching



revolutionized the world. Again, fifteen centuries later still, when Christian truth and Christian faith had almost grown faint in their long contest of a thousand years with the superstitions of the Northern Odinism, on the one side, and the fiendish fanaticism of the false prophet of Arabia, on the other; when Gothic Feudalism and Mohammedan intolerance unconsciously, yet strangely supplementing each other, had almost crushed out Freedom from the earth, the hopes of the human race were quickened into a new life by the discovery of a New World destined to become the home and the stronghold of Civil Liberty. These three great events wonderfully supplement each other in the divine co-ordination of human history and in the development of human civilization.

With reference to two at least of these three grand epochs in the history of mankind, the Exodus of Israel from Egypt and the Propagation of the Christian Religion, we are apt to forget or to ignore their civil aspect, and their influence on the political civilization of the world in the consideration of the transcendent character of their religious purpose. Not one iota would I assume to detract from the momentous importance of that purpose, but the peculiarly religious and supernatural character of these two great events is not impaired in any manner by a due regard for the great revolution which they operated in civil society. And in calling attention to this aspect of these extraordinary transactions in the dealings of God's Providence with our race, I only illustrate the statement which has heretofore been made of the one and indivisible

character of truth, whether applied to the manifestation of religious principle or to the evolution of a just and reasonable political economy.

The development of political principle from the proclamation of the reign of *Law* from Mount Sinai we have briefly sketched. The fifteen centuries of the first period which we have indicated were about to terminate, and the time was ripe for a new revelation that was to infuse new life into the Great Charter of human liberty that had been proclaimed upon Sinai, when the evil day had come that transformed the Roman Republic into the Roman Empire. With even a higher and broader scope and nobler meaning than had pervaded the Mosaic Institutions, the Divine Nazarene proclaimed from the Mount of Olives and the Hill of Calvary the doctrine of the Fatherhood of God and the Brotherhood of Man, the fundamental principle alike of Christianity and Civil Liberty. Moses had proclaimed the doctrine of the Fatherhood of God; but it was reserved for Jesus of Nazareth, the incarnate Son of God, to develop the doctrine in its fulness, and to couple it with its co-ordinate doctrine and essential consequence—that of the Brotherhood of Man.

Ten Commandments are enumerated as having been proclaimed through Moses. These ten were reaffirmed by Jesus, but practically reduced by him to two. He said :

“First, Thou shalt love the Lord thy God with thy whole heart, and with thy whole soul, and with thy whole mind; this is the greatest and the first commandment. And the second is like to this :

Thou shalt love thy neighbor as thyself. On these two commandments dependeth the whole law."

Caste and class and privilege, as is plainly evident from this announcement of the Saviour, are abhorrent to the spirit of the Christian Religion; caste and class and privilege are the deadliest enemies of Civil Liberty. The doctrine of the equality of man before the civil law must necessarily follow as a logical conclusion from the doctrine of the freedom and equality of all men before the law of God. It is impossible for us to love our neighbor as ourselves in the sense intended by the Saviour, or in any just or proper sense, if we deny to him equal rights with ourselves before the municipal law. And so it is that in the teachings of the Saviour and in the essence of the Christian Religion we find the groundwork of our political freedom and of our constitutional liberty.

In the course of three centuries Rome accepted the New Dispensation and became Christian. The republicanism of the old Hebrew Commonwealth of Moses and Joshua and Deborah and Gideon, and the free spirit of the Christian Church, essayed to infuse a new light into the decrepit body of the old Roman Civilization, long weighed down with the fearful incubus of Cæsarism. The Law of Sinai, the Law of Calvary and the Laws of the Ten Tables were combined in a new Charter of Civil Liberty. But it was too late for a total rejuvenation of the Roman system, and, in the mysterious councils of Divine Providence, it seems that a cataclysmic revolution was required to wash out the old order of things with blood, and to usher in a new

European system, with a probationary period of a thousand years of struggle and sorrow and suffering.

Rome fell, and the Roman Civilization went down in ruin before the terrific onslaught of the barbarous hordes that swarmed over the borders from Germany and Scandinavia. Alaric and Attila, Genseric the Vandal, Hengist and Horsa, Goth, Lombard, Frank, and Burgundian, made sad havoc of the Roman world and of its Christian civilization. It has been said that "the darkest hour in the annals of time since the fathers of the human race went forth from Ararat was that when the barbarians of the North burst through the barriers of the Roman Empire, drenched the plains of Gaul and Spain and Italy with blood, desolated their cities, ravaged their homes, covered the Mediterranean with their piratical fleets, destroyed the ancient marts of commerce, plundered the shrines of art and science, annihilated literature, subverted all the safeguards of society, and for the civilization of Rome substituted the unmitigated barbarity of the sword." And it has been added that "if we could only imagine the massacre of Wyoming on a continental scale, we would have no more than a true picture of Europe when the Roman Empire fell before the savage hordes of Germany and Scandinavia."

Writers, who have derived their inspiration from the same instincts that animated these bloodthirsty savages, have not hesitated to enlarge upon the virtues of the barbarians as contrasted with the supposed degeneracy and corruption of the Roman Empire. The falsity of their statements is only



enhanced by the small element of truth that is contained in them. The rulers of the Western Empire of Rome—for the Eastern Empire withstood and repelled the shock under circumstances not substantially different—were undoubtedly degenerate and corrupt, and wholly unfit for the conduct of the government which fell into their imbecile hands; although there was greatly less of degeneracy, corruption and imbecility in the Western Empire of Rome at the time of its fall than there was in England in the reign of the Stuarts and of the first Hanoverians, or in France under the Bourbons. There is nothing whatever to show that the people of the Roman Empire at the time of its overthrow were in any way worse, physically, morally, or intellectually, than those of the ages that preceded them or those of any of the ages subsequent to them for a thousand years. On the contrary, there is every indication that they were in every way more virtuous and more enlightened than either their predecessors or their successors for many ages. And as for the supposed virtues of the Barbarians in contrast with the supposed vices of the Romans, it requires the distorted imagination of the most irrational fanaticism to discover their existence. The theory of these writers is the truly Oriental theory—that temporal calamity is the result of personal misconduct, and that, on the other hand, temporal prosperity is the logical sequence of virtuous action—a theory worthy of the utilitarian school of English philosophy, but antagonistic to all revealed religion and to all sentiments of honor, honesty and patriotism.

It is not difficult to find the cause of the overthrow of the Roman Empire by the Northern Barbarians without seeking for the existence of a degree of degeneracy and corruption that did not exist. Nor is it necessary to find virtue in these Barbarians, that is equally imaginary, because many, perhaps the most of us, are descended from them. The government of the Western Empire of Rome at this time was undoubtedly weak and corrupt, greatly more weak than corrupt; and its weakness beyond question hastened its ruin. All weakness in government is detrimental, more detrimental in a temporal point of view even than crime; and long continued weakness is always fatal.

Without entering into the controversy over the causes of the great catastrophe, this much, at all events, is beyond all doubt,—that the Roman Government at this time was a government of law; and that the brutal savages, who overthrew it, and who held high carnival of blood and carnage amid its ruins, had nothing but the barbarism of the sword with which to replace it. Their association, previous to their invasion of the Empire, was that merely of bandits and outlaws; their holding of the Empire, after their conquest of it and its disruption into fragments, was not much better than the perpetuation of an organization of robbers. The overthrow of the Empire put back the cause of Civilization and of Civil Liberty for a thousand years. It was the commencement of a bitter and desperate struggle which lasted through ten centuries, probably the most desperate and doubtful struggle in which civilization was ever involved, the struggle

which characterized all the Middle Ages against the savage superstitions of Odinism and the brutality of the Feudal system.

Feudalism and Odinism dominated Europe for thirteen centuries: it cannot be said that they have yet entirely ceased to dominate it. Feudalism was the organization of society upon a military basis. It was the rude expedient adopted by the Barbarian Hordes who overthrew the Roman Empire to perpetuate their conquests. From armies of invasion they converted themselves into armies of occupation. The lands which they had conquered for themselves they parcelled out among themselves upon military tenures; that is, upon the condition of the rendition of military services: and they sought to hold the Roman Provinces which they had overrun by the brute force of a military organization. So the Barbarian Generals became kings of the countries which they had conquered; their principal officers became barons, and counts, and marquises, and dukes. These savage chiefs built their frowning fortresses on the hills, from which, with their retinues of armed ruffians, they overawed the surrounding territory and compelled the peacefully disposed cities to purchase a precarious protection and immunity from plunder by the payment of a stipulated tribute. Commerce and industry, and the arts of peace, were permitted to be carried on only by the payment of tribute to these strong-armed feudal ruffians; and as for literature and science, they were compelled to take refuge in the monasteries, and under the shadow of the residences of the Christian Bishops, who alone, by rea-

son of their holy calling and their fearless intrepidity in the defense of their people, seemed able to make any headway against the deadly assaults of the Barbarians upon the remnants of the Roman Civilization.

But even the monasteries and the churches, and the residences of the priests and bishops, were not always safe from assault and pillage by the robber barons and their feudal monarchs; and only by the combination of the inhabitants of the cities into guilds and corporations, and by the maintenance by them of a semi-military organization, were such liberties as the cities had retained, relics of the Roman Civilization, secured against the violence and the treachery of the feudal chiefs and their followers. These Barbarians, and their descendants and successors, the feudal classes of Europe during the period of the Middle Ages, were as treacherous as they were cruel, as unprincipled and faithless as they were vicious and violent. A glamour of romance has been thrown around them by writers, who either sympathize with their vices or are ignorant of their true character; but any other band of robbers would be equally deserving of romantic interest, and, in fact, the Ishmaelite ruffians who swarmed from Arabia for the conquest of the South, and others of a similar character, have equally received it. Certainly no worse enemy than Feudalism and the Feudal system has ever been encountered by the cause of Civilization and Civil Liberty. Vassalage and slavery, of course, were not unknown before that System; but never before it was it sought to organize vassalage and slavery



on so gigantic a scale as the elementary system of human society.

The victorious Barbarians, who parcelled out the provinces of the Roman Empire between themselves, generally professed at the time of their conquest the bastard form of Christianity known as Arianism, which was exceedingly prevalent at the time, and the vicious intolerance of which seems to have had the effect of converting all who professed it into violent persecutors of Orthodox Christianity. But the great majority of them never ceased, in fact, to be adherents of the superstitions of Odinism; and the influence of that gloomy and bloodthirsty creed, if creed it can be called, was perpetuated for many a century, even long after their descendants had apparently given in their adhesion to the Orthodox Church; and probably it would not be incorrect to say that the influence has been perpetuated to this day.

The ages which supervened upon the overthrow of the Roman Empire of the West and of the Roman Civilization by the Northern Barbarians we frequently call the Dark Ages; and with a strange inconsistency, but only illustrating the fable of the wolf and the lamb, the appellation is most frequently given by those writers to whom reference has already been made as giving to the Barbarians who caused the darkness a sympathy almost fiendish in its malignity. Dark undoubtedly those ages were with the infamies of the Feudal System, with the brigandage of the lawless barons and the military cut-throats who kept the people in turmoil, with Lombard violence, Souabian insolence, Carlo-

vingian and Capetian licentiousness, and the ruffianism, for we cannot call it by any more appropriate name, of Norman and Plantagenet Kings. It was with this darkness and with its dark deeds of violence that the Roman Civilization was compelled to contend through ten centuries, in order to recover its lost vantage-ground and to gain the light again. Even from the very beginning that Civilization entered upon the long struggle, and sought to bring under its influence some of the Barbarian leaders themselves. Among these were Theodoric the Ostrogoth and Clovis the Frank, whose native talents enabled them to some extent to rise above their barbaric surroundings and to appreciate the value of the civilization which they had contributed to subvert. But their efforts to raise themselves and their followers to the level of that Civilization were not crowned with any extraordinary success; and the long night of the Northern Barbarism brooded over Europe, with but few faint stars to illumine it, for at least seven centuries. One grand heroic figure, a man of transcendent genius, one of the few whose great personality has moulded history, sought with some measure of success to bring order out of the chaos and to diffuse the radiance of the Roman Civilization over the Northern darkness—Imperial Charlemagne. But even the unrivalled genius of Charlemagne was unable to effect the desired result. The advantage gained by him was lost under his feeble successors. And it may be said that the contest went on for seven hundred years after him before the spirit of Feudalism yielded to the spirit of Civilization; before the Freedom, born upon the

Palestinian Highlands and nurtured on the hills of Greece and Rome, was enabled, with her lamp of truth and justice, to let in the light of a better day upon the darkness begotten of the northern Odinism.

The lamp had been kept burning in the temples of Christianity; in the schools which Christian bishops had maintained within their cities; in the monasteries to which the Romanic population flocked in great numbers, and which they erected into veritable fortresses of education and civilization in antagonism to the castles of Feudalism; at last in the great Universities, which became semi-independent republics, with their own free institutions and their own self-made laws, and their own autonomy; and all the time in the cities which dated their existence back to the old Roman times, in which the principles of freedom had been sedulously perpetuated, and which had succeeded in maintaining many substantial privileges, if not always their independence, against the persistent attacks of the feudal barons and the feudal monarchs. From Rome itself the old free spirit had never wholly perished; and especially after it had been relieved of the presence of the Emperors by the transfer of the seat of Government to Ravenna, it infused new life into the Senate, which had never wholly abandoned its functions or its organization; and soon the spirit of liberty in the Italian Peninsula, aided by the potent influence of the Roman Pontiff, which was always exerted on the side of freedom, proved strong enough at last to roll back the tide of the Northern Barbarism.

The birth of modern Civil Liberty was in Italy. First, Venice lit her lamp at the Roman shrine of freedom ; and to her credit be it said, Venice never received a feudal lord within her island walls. She was the first of the Italian Cities to assert her independence, and the last to maintain it unimpaired. First in commerce in the modern days, as Tyre and Carthage were in the ancient times, she has received from modern publicists the praise which Aristotle gave to her ancient prototypes, of excellence of political institutions. We are disposed to remember most some odious features of those institutions and some of her social crimes against individual right ; but in the light of her eminent services to Civilization and to Civil Liberty, including therein her long contest with those foes of humanity, the Turks, these crimes cannot be permitted to weigh in the balance against her. She was the foremost champion of freedom when the Anglo-Saxon savages from North Germany were engaged in the congenial work of uprooting and destroying civilization from the face of Britain ; and she did not perish from among the nations until in our own America we had permanently established the principles of freedom for which she had contended for upwards of fifteen hundred years with Teutonic Feudalism, on the one side, and the infamy of Mohammedanism, on the other. What the cause of Civil Liberty owes to Venice has never yet been sufficiently estimated.

Bologna, Florence, Pisa, Amalfi, Genoa, Milan, followed the example of Venice. All the Lombard Cities, so-called, became alive with the spirit of free-



dom. All the Cities of Tuscany, of the Romagna, and of Central and Southern Italy, rose in rebellion against the Feudalism imposed upon the Peninsula by its Teutonic invaders, and sought to be maintained there by the German Emperors; and if they did not succeed in wholly destroying the institution and extirpating the robber brood, they succeeded at all events in confining it and them within bounds. The Italian Republics revived the glory of Greece and Rome. They combined the maritime enterprise of republican Phœnicia with the sturdy patriotism of republican Palestine. They had not only the descendants of the Goths and Vandals and Lombards within their own borders to contend with; they had likewise repeatedly to withstand new invasions of Northern Barbarism, ambitious enterprises of French and German monarchs, and Norman adventurers. And yet they succeeded in maintaining their liberties, and maintaining at the same time the cause of humanity and of civilization, against all their enemies and all the foes of freedom.

It is very true that these Republics were often torn by intestine strife and convulsed by civil war, that they were disturbed by contests of Guelphs and Ghibellines, and that their annals are stained by dark deeds of blood and cruelty. But those deeds of blood and cruelty and all the contest and the strife of the Italian Republics sink into insignificance when they are contrasted with the outrages and the atrocities of the contemporaneous Feudalism. And moreover, most of the dark deeds and most of the crimes that are charged to the ac-

count of the Italian Republics were in fact the work of the feudal bandits who had survived in their midst, the Colunas, Orsinis, Estes, La Scalas, Viscontis, and Sborzas, all of them descendants of the Northern Barbarians and not of the old and true Italian stock, to which was due the resurrection of the spirit of liberty.

Credit is given to the Italian Republics, which they amply deserve, for the renaissance in modern times of art and science and literature, which may be said to be due to them alone; due credit has not been given to them for that great free spirit which became potent enough to crush Feudalism in the Italian Peninsula; to beat back the German Imperialism beyond the Alps; to react upon the great feudal monarchies of Germany, France and Spain; to invade with their influence the Swiss Cantons and the great Cities of the Rhine, where the old Romanized population, whether of Gallic or Teutonic origin, had retained some traces of the old Roman system in their municipal institutions; to excite a spirit of emulation and generous rivalry even among the purely Teutonic Cities of the German Ocean and the Baltic Sea, which constituted the famous Hanseatic League; and finally to reach the shores of England, where the Lombard merchants settled in London contributed greatly to liberalize the institutions and the public sentiment of the English Metropolis. From Italy and the Italian Republics, beyond all reasonable doubt or question, emanated the influences which, in the interest of Civil Liberty, reacted upon the regions of the Centre and North of Europe. It is easy to trace

the path which Freedom took; it was the path of Commerce. First crossing the Alps into Switzerland, the ancient Helvetia, once an integral part of the Roman Empire and where the Roman influence may well be supposed to have survived, it renewed in the hardy mountaineers of that country the spirit of freedom, which, however, did not find occasion for its assertion in positive action before the beginning of the fourteenth century, when such action had already been had in countries farther to the north. Next it influenced the cities of the Rhine, where also the Roman influence had always been dominant, and where, if there was feudal rule, it was that of ecclesiastical rulers, such as the Archbishop of Mayence and the Elector Archbishop of Cologne, who necessarily subordinated the feudal to the Roman institutions, and consequently removed the occasion of conflict between the people and the Feudal System—although that conflict on occasions became sharp enough when the “robber barons,” as they were then justly called, leagued themselves to depredate upon the commerce that was carried on along and upon the famous river. But in the Cities of Flanders and the Netherlands, in Antwerp, Ghent, Bruges and Utrecht, the Italian influence was most marked, and the spirit of liberty became most dominant. Most strongly outside of Italy the opposition to the Feudal System and to Feudal ideas asserted itself in those Cities of the Roman borderland which had been established as bulwarks of the Roman Civilization in Gaul against the encroachments of the Teutonic Barbarians to the North and East of the regions of the Lower

Rhine. And thus we find in the path which commerce took in those days, and along the line of the great frontier river between France and Germany, dotted with the cities that had originated as Roman colonies, the principles of Civil Liberty were propagated anew from Italy.

Probably the strangest feature in the revival of free institutions in mediæval Europe was the establishment in the very heart of Teutonism, along the shores of the Baltic Sea and the German Ocean, of the famous confederation of republican cities known as the Hanseatic League, or the League of the Hanse Towns, and the establishment for a time of republican institutions in that Ultima Thule of the Greeks and Romans, Iceland. The Hanseatic League, as we know, was a confederation of the commercial cities of the northern seas, comprising at one time some sixty or seventy different municipalities, and including Hamburg, Bremen, Lubeck, Dantzic, Wisby, and even distant Novgorod, in the heart of Russia, all practically independent of the great surrounding feudal monarchies, and all with civil institutions based upon those in existence in the Italian Cities. How comes it that we find these republican municipalities in the far North in the very ages during which Feudalism was supreme in all the surrounding nations? How comes it that we find republican institutions in full force and vigor among the kindred of the ruffian barbarians who held the greater part of Europe at the time, and for many centuries afterwards, in the thralldom of the worst system of social slavery that was ever devised? It seems rather difficult to account for



the foothold which republican institutions and the principles of Civil Liberty acquired at this time in the Cities that comprised the Hanseatic League. But one fact in regard to it is well settled and fully admitted by all writers on the subject; and that is, that the influences which led to this anomalous condition had emanated from Italy, and that the republican institutions of the Hanse Towns were the direct result of the republican spirit then triumphant in the Italian Peninsula. The visits of Italian merchants and Italian trading vessels to the North Sea and the Baltic are well known, and the spirit of freedom and the spirit of commerce alike were fostered by the intercommunication of ideas between the merchants of Italy and the mercantile communities of the North. In fact, it would seem as if opportunity had been afforded for the revival of freedom in the North by the unloading of its turbulent superfluous population upon Central and Southern Europe. And, indeed, there is some reason to suspect that this turbulent population, which was precipitated upon the Roman Empire and submerged it, was not itself indigenous to the regions along the Baltic, from which it is generally assumed to have proceeded, but may have been intruders and conquerors there before they had occasion to become conquerors of the provinces of the Roman Empire.

However this may be, the curious spectacle is presented that, in the lands from which the brigands and bandits are stated to have proceeded who sought to fasten upon all Europe the yoke of the most brutal slavery the world has ever known,

there arose, during the very ages in which that slavery was most galling, a galaxy of petty republics, not unworthy to be enumerated by the side of the famous Italian Republics of the time as staunch upholders of the cause of Civilization and Civil Liberty. And it is a curious fact, too, that although the Hanseatic League was comparatively short-lived, and many of its members succumbed, in course of time, to the assaults of the feudal monarchies by which they were surrounded, some four of the celebrated Cities which composed it, Hamburg, Bremen, Lubeck and Dantzic, survived as independent republican municipalities down to the present century, Dantzic having finally lost its independence in the course of the Napoleonic Wars, and Hamburg, Bremen and Lubeck having yielded their republican independence even yet more recently to the coercion of Otto von Bismarck.

Thus, to the Italian Republics in the South and the Hanseatic League in the North, but primarily and chiefly to the Italian Republics, is due the conservation of the principles of civil liberty through the Middle Ages; and, with the principles of civil liberty, all that survived of the ancient Roman civilization. But even in the great feudal monarchies themselves the cities did not surrender their ancient liberties and privileges without a struggle. But into the details of this struggle it would serve no useful purpose here to enter, even if we had the time to do so. Suffice it to say that even amid the despotic feudalism of England, one of the most tyrannical in all Europe, the City of London, influenced in that regard by the Cities of Flanders

and the Italian Republics, had much to do with the conservation of such remnants of the ancient Roman freedom as survived in England under the Anglo-Saxon rudeness and the Norman domination. But not much survived in England, and the island kingdom had little or no part in the great contest against Feudalism. It awoke to the realization of the blessings of civil liberty at a comparatively recent period, when the brunt of the struggle had long been borne by others. What part England has played in the great contest we will have occasion to notice hereafter more fully and in greater detail.

It may be proper at this point to advert to the influence of certain occurrences and institutions of the Middle Ages upon the contest between Civil Liberty and Feudalism. In this connection three things above all others are deserving of notice. These are the Crusades, the establishment of the monastic institutions, and the contest of the Popes with the feudal powers of Europe, each and all of which had a remarkable bearing upon the great struggle which we have endeavored to sketch.

The overthrow of the Roman Empire by the Barbarians, and the establishment of their petty feudal despotisms and their feudal system in its place, not only menaced the existence of civilization and threatened the extermination of Civil Liberty, but, contrary perhaps to what might be supposed by casual and superficial observers, introduced an element of weakness into the European social system which tended to make it an easy prey to other enemies. It might be supposed that the military prowess and courage attributed to the vic-

torious Barbarians would have contributed, at least, to strengthen Europe externally, and to have made the dismembered provinces of the Empire more potent within themselves. The contrary was the result, and necessarily the logical result, of the incursions of the Barbarians; for the accession of a horde of bandits and brigands can give no real strength of any kind to the forces of civilization. It may be a potent cause of turmoil lasting through ages, as it was in this case; but it infused no strength or vigor into the body politic. It resulted in no vigorous administration of the affairs of government; and it seems to have been powerless against external enemies.

Apart from the powerful empire built up by the three great Carlovingians, Charles Martel, Pepin, and Charlemagne, short-lived as it was in one sense, although it was not without its influence in after ages, the feudal monarchies established by the Northern Barbarians upon the ruins of the Roman Empire were as weak and imbecile as they were characterized by violence and turbulence. They were unable to stand against the efforts of the Eastern or Byzantine Empire, as soon as that Empire in competent hands resolved to cope with them. And so the kingdom established by the Vandals in Africa collapsed in a single campaign conducted by the great Belisarius; and the kingdom of the Ostrogoths in Italy yielded to the same able commander with no very much greater difficulty. So, also, when the Saracens had overrun Africa and undertook to cross over into Spain, the Visigothic monarchy in the latter country was overthrown by the



Ishmaelites in a single battle. The Northern Barbarians were potent for mischief; they could pull down the stately edifice of civilization, and build their own rude huts among the ruins; but the social system and the feudal monarchies established by them were impotent for good, and were wholly incapable of insuring respect abroad or the social order at home.

Once, and once only, under the influence of the Roman Pontiffs, the feudal powers of the Middle Ages entered upon a great enterprise that promised well for the cause of humanity, human civilization, and human right. I refer to the Crusades, those remarkable movements in which the powers of Europe sought to stem the torrent of Moslem aggression that threatened for a time to overwhelm Europe, with all its Aryan and Christian civilization. The Crusades, notwithstanding what has been said of them by those writers whose sympathies are antagonistic to everything that is meant by Christianity, were conceived in the highest spirit of wisdom; and if they failed to accomplish all that they should have accomplished, it was because the Feudal System and the Teutonic organization of society at the time were unequal to the great task. Two men alone, Godfrey of Bouillon, the heroic leader of the First Crusade, and Louis IX. of France, the equally heroic leader of the Seventh and Last Crusade, seem to have had any adequate idea of the great enterprise, or to have risen to the level of the great occasion. But even they were unable, with the limited means placed at their disposal by the Feudal System, to accomplish more

than the mere temporary arrest of the Oriental invasion. The great good which the Crusades accomplished, apart from this temporary stay of Orientalism, was in paving the way for the gradual destruction of the Feudal System by the destruction of the feudal nobles and by demonstrating its utter inefficiency. The European towns and cities increased in importance and augmented their rights and privileges by the concessions which they extorted from the feudal nobles as the condition of aiding them in fitting out their expeditions for the East; and, of course, every gain by the towns and cities under these circumstances was a distinct and positive gain for civilization and civil liberty.

In the second place, the establishment of the monastic institutions contributed wonderfully to the advancement of the cause of human right and human enlightenment. In view of the statements of many writers, loud in their denunciations of monasticism and of everything appertaining thereto, this assertion may seem paradoxical, and yet it requires no more than the most superficial examination to show the entire truth of the assertion.

The monasteries were the refuge of the Latin or Romanized populations of the Roman Provinces that had been overrun by the Barbarians. In them was kept alive whatever of learning, art and science had escaped the sword or the torch of the Northern ruffians. In them was the art of writing perpetuated and the literary treasures of antiquity conserved by the patient labor of transcription. They constituted fortresses against the attacks of the robber barons and their bandit hordes, and their moral influence

operated to some extent as a restraint upon the rapacity and violence of the feudal nobles and their retainers. The beneficial influence of all this upon the cause of civilization must be patent to all except those who read history with a distorted eye, or whose mental obliquity is such that to them evil is good and good is evil. And there are, unfortunately, too many whose creed in this regard is the creed of malignity.

But independently of all this, there is another consideration even more directly in point, and yet which has been in great part ignored even by those who are willing to do justice to the great services rendered to humanity by the monastic institutions of the Middle Ages. It is that these institutions were organized under written constitutions, and that for the conduct of their affairs they adopted the representative and elective system of government. It is a fact beyond all doubt and beyond all question, that the first distinct and positive illustration of constitutional government is to be found in the monastic orders. The very word *Constitution*, in the technical sense in which we now use it, was first so employed by them; and Constitutionalism in government may in fact be said to have originated with them. The Constitutions of Saint Anthony, and Saint Augustine, and Saint Francis of Assisi, and Saint Dominic, and subsequently the Constitutions of Saint Ignatius of Loyola, Saint Francis De Sales, and others, were the first schemes on record of strictly constitutional government, as we now understand that term; and it is likewise a fact, although the fact seems to be but little known, or has been

but rarely mentioned, that this circumstance was frequently the subject of consideration, informally at least, in the Convention which formulated our own Federal Constitution. And not only did these monastic bodies live under constitutional government radically antagonistic to the arbitrary and brutal military despotisms of the Feudal System, but their organization, also, as we have stated, embraced the elective and representative idea in the management of their affairs. Their principal officers were all elective, as they actually remain to this day; and their important affairs were transacted through General Conferences or Congresses composed of delegates from the different houses of the respective Orders, and elected by those houses by the means of general suffrage. There was absolutely nothing wanting to assimilate their theory of governmental organization to our own Constitutional system in force with us this day. How the practical enforcement of such theories must have militated against the ideas upon which Feudalism was based, and the purposes for which that infamous system was instituted, needs no elaboration to make it clear.

In the third place, and perhaps most potently of all, the long continued and constantly recurring contests between the Roman Pontiffs, on the one side, and the feudal nobles and the feudal monarchs, on the other, running through all the Middle Ages and down even to the beginning of the present century, contributed greatly to the advancement of the cause of civilization and Civil Liberty. This statement, also, is controverted by the writers to



whom I have already more than once referred; and nowhere, perhaps, more than in this connection has their bitterness been exhibited; and it is strange how utterly unjustifiable is their system of misrepresentation in this regard.

To trace with minuteness the contest between the Popes and the German Emperors over the subject of investitures, as they are called, or between the Popes and the Kings of France over the subject of the sanctity of the marriage relation, or between the Popes and the Kings of England for the freedom of the Church in that country, or between the Popes and Kings and Nobles everywhere throughout feudal Europe to restrain violence and lawlessness,—contests, with which the history of the Middle Ages is full to overflowing,—would require more space than we could well devote to the subject here, even if we had the desire to enter upon it. Suffice it to say that, in that history, and from the very beginning of the period down to its latest day, we find mention and continued evidence of an apparently irrepressible conflict between Church and State in Europe, between the Ecclesiastical and the Civil authority. We assert without hesitation, and without fear of successful contradiction, that the conflict at all times and under all circumstances was one between Civil Liberty and the forces of Civilization, on the one side, and feudal despotism and lawless brute force, on the other. We do not mean to be understood as claiming by this statement that the representatives of Civilization in this conflict were always right in the course pursued by them, and that the supporters of the feudal despot-

ism were always wrong. There were undoubtedly excesses on both sides. But undoubtedly, if ever there was a case where excess was justifiable, it was in this war to the death between brutal tyranny and the cause of human liberty and civilization. And, again, we assert that the cause then represented by what we may call Ecclesiasticism was the cause of the people against the hereditary ruffians who would have perpetuated over them the tyranny of the sword.

The establishment of the Feudal System in Europe by the Northern Barbarians and their descendants drew a sharp line of distinction between the Feudalists and the great mass of the people. The former comprised the Teutonic conquerors of the Roman Empire, of whom the chiefs, as we have stated, became dukes, and counts, and barons, the so-called nobility of Europe; and their followers and armed retainers, according to their respective grades, became knights and soldiers, and some even sank to the grade of serfs and menials. The latter, the people, of manifold origin, British, Gallic, Spanish, and Italian, and partly even Teutonic, were the descendants of what may be called the old Latin or Romanized inhabitants of Southern and Western Europe, and comprised the mass of the population of the Cities where they especially intrenched themselves and made a more or less successful resistance to the conquering Barbarians. They generally became tributary to the feudal chiefs, in most cases to the monarch alone; but exacted as the condition of their submission a due regard to their municipal rights and liberties de-

rived to them from the Roman Empire. The feudal nobles and their retainers devoted themselves to war and violence as their normal occupation; and when they were not so engaged, the only arts of peace which occupied them were the chase, the joust, and the tournament. Art and science and literature had no charm for these Barbarians; and in all the ten centuries from the end of the Fifth to the end of the Fifteenth Century not one of their race became eminent in any of the branches that go to make up the cultivation of our civilized life. Charlemagne, Godfrey of Bouillon, Louis IX. of France, and a few others may be named, who became distinguished for statesmanship or for heroic conduct; but with the exception of Thibaut of Champagne, who cultivated music and poetry, and some few chroniclers, who are not certain to have belonged to the feudal classes, literature owes nothing to these men. Whatever of art or science or literature there was in the Middle Ages was the product of the people of Latin origin as distinguished from the feudal classes. To these last it may be truly said that Civilization owes nothing but their persistent war upon it.

The struggle between Civilization and Feudalism went on unintermittingly through the ages. At last the period of trial and probation was drawing to a close, and it was not even then quite apparent whether Feudalism or Freedom was to triumph. Indeed, at the end of the long night of barbarism, the outlook for Freedom seemed to be most gloomy. Free Switzerland had arisen, it is true; but the republican cities of Italy, as well as those of the Han-

seatic League, had suffered many severe losses in the contest. The spirit of Freedom seemed to be growing faint; the spirit of Odinism apparently was gaining renewed strength. It was not very long, in fact, before the latter, taking possession of a violent revolutionary movement in religion, broke forth into such a factiousness of fierce intolerance as to set the cause of Civil Liberty in Europe back for three centuries more.

At the same time, that most accursed enemy of Civilization, the hated Moslem, was perniciously active in the East. The Turks, in A.D. 1452, had overthrown the last remnant of the Byzantine or Eastern Roman Empire, had captured Constantinople, planted their banners on the dome of Santa Sophia, and advanced their conquests to the shores of the Adriatic, and almost in sight of Venice and of Italy. The great bulwark which the Byzantine Empire had presented for over seven hundred years against the surge of Moslem invasion of Europe was ruthlessly swept away, and the Turk was advancing into the very heart of Europe.

In truth, the darkest hour was the hour before dawn. But the dawn came at last. The second period of fifteen hundred years was drawing to a close. The third period was ushered in with the most heroic enterprise in all the annals of time. Braver in all the elements of moral heroism than was Leonidas at the Pass of Thermopylæ when he withstood without hope of succor the swarming myriads of Persia's King, braver than Curtius when he leaped into the yawning gulf to save Rome, was that heaven-inspired republican navigator, the



“world-seeking Genoese,” who, on the third of August, A.D. 1492, sailed westward upon that memorable voyage into unknown seas that never had parallel before or since; who, week after week and month after month, in the greatest quest ever yet undertaken by man, sailed westward through that pathless and mysterious ocean, and even while the fearful storm of mutiny was rising around him, with no human aid nigh, and no hope but in God alone and his own great heart, effected that remarkable voyage, the story of which thrills us even yet, for the discovery of the New World. It was not unlike that other great voyage when the saving Ark bore the chosen few from the accursed shores of the primeval world across the diluvian waters to a regenerated earth. On the “Santa Maria,” although the great Admiral himself knew it not, at least to its full extent, were borne Humanity’s hopes of Civil Liberty and the fortunes of millions yet unborn, not merely in the New World that was to be, but equally in the Old World, whose aspirations depended for their fruition on the influences that were to emanate from that New World. For it is an undoubted fact that the successful enterprise of Christopher Columbus gave to Freedom a home in the New World which was denied to it in the Old, or whereof its holding had become precarious, and that from the New World the spirit of Freedom reacted upon the Old in such manner as finally to break the fetters that otherwise might never have been broken. To the influence, direct and indirect, of America is due beyond all question the revival of the spirit of Freedom in Europe, and the establish-

ment there of constitutional government. Without the opening up of the New World by Columbus, and the room therein given to Freedom to grow in the virgin forests undisturbed and far removed from the deadly blight of Feudalism, it is exceedingly doubtful from our human standpoint whether Feudalism or Freedom would finally have triumphed on the Eastern Continent. Indeed, the probabilities seemed to be all in favor of Feudalism, Imperialism and Absolutism, and, in fact, for two centuries after the discovery of America and until the result of the establishment of free institutions upon our continent had opportunity for reaction upon Europe, there was less of Freedom on the Eastern Continent than at any time during the whole period of the Middle Ages. With the exception of Venice, and to a certain extent of Genoa and Switzerland, all Europe had sunk beneath the sway of absolute monarchy. Feudalism, it is true, had been shorn of some of its lawlessness, but none of its brutality, and the merging of Feudalism into Imperialism cannot be said to have greatly aided the advancement of the cause of Civil Liberty, except in so far as it substituted one single-headed despotism for the hydra-headed monstrosity of ten thousand petty tyrants.

The result of the reaction of America upon Europe it will be our province to sketch hereafter. It will be sufficient to state here that the reaction seems to be radical and permanent; that Feudalism and Imperialism through all the civilized world are dead or dying, and are only awaiting decent burial, and that the spirit of Civil Liberty is every-

where dominant, even if not yet everywhere entirely triumphant.

But there is a chapter in the history of the great contest to which we have scarcely referred, and yet which intimately concerns us—the part which England has borne in the struggle for Civil Liberty.

## LECTURE III.

## THE DEVELOPMENT OF CIVIL LIBERTY IN ENGLAND.

WHAT part has England borne in the great contest of the ages for Civilization and Civil Liberty? Not as brilliant a one as her writers would have us believe. If we could give credit to them, we would conclude that Civilization and Civil Liberty were both indigenous to the Island of Britian, and yet, with a strange inconsistency, that both originated among the Anglo-Saxon savages of North Germany; and that Greece and Rome and Palestine and Phœnicia not only exercised no influence on Anglo-Saxon civilization, but in fact scarcely existed, so far as that Civilization was concerned. Very many persons in our own country, either as the result of limited information, or controlled by the authority of writers and speakers whose sole purpose it seems to be to glorify the Anglo-Saxon race at the expense of all other races, have yielded assent to the theory of the evolution of our so-called Anglo-Saxon institutions, therein including what they are pleased to call Anglo-Saxon Civil Liberty, from the rude customs and usages of the barbarians who flocked to the Island of Britain from the fens of Friesland and the forests of Jutland.

Now, it is no more to the discredit of our present Anglo-Saxon or Anglo-American race that the Angles and Saxons, and other barbarians who came with them to plunder Britain in the fifth and sixth



centuries of the Christian Era, were the most cruel, the most bloodthirsty, and the most thoroughly savage of all the savages who contributed to dismember the Roman Empire or to destroy the Roman civilization—that their institutions were utterly unworthy to be designated as civil institutions, being those merely of the rudest savages—that there was no element of civilization or civil liberty possible to be evolved from such institutions—than it was to the discredit of the Romans, at the time of their greatest development, that they were confessedly, and by the honest admissions of all their own historians, the descendants of an aggregation of cut-throats, robbers, bandits, thieves and outlaws. A great race may spring from the most contemptible origin. It is not necessary to outrage the truth of history in order to justify the present eminence of the Anglo-Saxon race, if it be proper so to call it, in the affairs of the world. The Anglo-Saxon race did little or nothing for the cause of Civil Liberty until the Seventeenth Century.\* It is not necessary to enhance what it has done since, which

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\* The assumption that Civil Liberty has always been the heritage of the inhabitants of England has not even the merit of being the outburst of exaggerated patriotism. It is simply the result of deliberate falsehood and insular bigotry, not unlike the bigotry and ignorance of the Chinese map-maker, who represents the world with the Chinese Empire in the centre, and merely designates the other nations by small dots upon the margin. The assumption is on a par with the cognate pretense of a derivation of their peculiar and special branch of the Christian Religion, not from the Apostles of the Saviour, but from his companions, and mainly from Joseph of Arimathea, who is supposed to have brought it to them in some mysterious way without transmission through Rome or taint or contact with the intervening Roman Empire.

is ample enough, by gross misrepresentations of what it did, or failed to do, before. Certainly it is not necessary to trace out Anglo-Saxon Civil Liberty, as we are sometimes pleased to call it, or any of the civil institutions by which we claim that Civil Liberty to be subserved, from the rude usages and savage customs of the barbarians of North Germany and Scandinavia. The freebooters who came with Hengist and Horsa to the conquest and plunder of Britain did not materially differ in their usages and customs from the other barbarian or savage races of the world, the American Indians, the wild tribes of Arabia, or the wandering hordes of the Mongolian Deserts. These savages and barbarians all boast of the possession of a certain freedom; but assuredly this barbarous freedom has nothing in common with Civil Liberty, as we understand that term. On the contrary, the freedom of the savage, which is mere lawlessness, is a more deadly enemy to Civil Liberty than is Oriental despotism, because it is the enemy of all Civilization and of all the interests for which Civilization stands. And so it was with the Anglo-Saxons. Neither Civilization nor Civil Liberty was their heritage; both have become their acquisition. It is simply the grossest falsehood to confound the two things.

A brief retrospect of some salient facts in the history of Britain and of the so-called Anglo-Saxon race, which is not entirely a correct designation of the people to whom the name is given, will be proper for a full understanding of our subject.

The greater part of the population of Britain,

the country now more commonly known to us as England, when it first emerged from obscurity and became known to the civilized world, in the time of Julius Cæsar (B.C. 55), belonged to that great branch of the Aryan race designated as the Celtic. The Celts would seem to have been the first inhabitants of all Western Europe, therein including the countries now known as Spain, France, England, Scotland, Ireland, and probably Northern Italy. In the Dispersion of the Noachidae from the Plains of Shinar they were the first to blaze their way across Asia Minor and through the virgin forests of Europe to find their assigned habitation along the shores of the Western Ocean. Immediately following them, or perhaps merely separating from them towards the latter stages of their journey, came the kindred race of the Teutons, who occupied the central regions of Europe, now known as Germany, and who also branched off towards the north, into the countries of Scandinavia. Eastward of the Teutons, and occupying the greater part, if not all, of Eastern Europe, were located the Sarmatians or Slavonians. These three great races, the Celts, the Teutons, and the Sarmatians, who may have been intended to be designated in the tenth chapter of Genesis by the names of Ashkenaz, Riphath and Togarmah, sons of Gomer, who divided the regions of the North and West between them, were busy with the occupation of Europe north of the great mountain ranges of the Alps and the Balkans, while another Japhetic or Aryan race, the greatly more famous Javanians or Pelasgians, were colonizing the European lands along the shores of the Mediterranean Sea.

To these four races was assigned the colonization, and yet not the civilization of Europe; for in their struggle with the material forces of nature, like all pioneers and frontiersmen, they lost the arts of civilization, and these had to be supplied again from one of the great centres which had always retained them, and by one of the races which had never degenerated into rudeness or barbarism, the Hamite race of the Phœnicians. To the Phœnicians, as we have seen, the Greeks and Romans, the two most famous branches of the Javanian race, owed the best part of their civil institutions, and especially the principles of Civil Liberty, which the Phœnicians themselves had borrowed from the Mosaic institutions. The same Phœnicians also, and after them their disciples, the Greeks and Romans, maintained a large intercourse with the Celtic nations, and planted their civilization on the shores of the Western Ocean. The Phœnicians, no doubt, visited the coasts of Gaul and Britain upwards of a thousand years before the Christian Era; the Greeks followed in their track about six hundred years before the same Era. Of the influence of both upon the Celts it would carry us beyond the scope of our subject to speak here in detail. Suffice it to say that when the Romans came into contact with the Celtic nations, and especially when, under the leadership of Julius Cæsar, they entered upon the conquest of the two most prominent of the Celtic nations, Gaul and Britain, they found them in a greatly more advanced condition than were their neighbors, the Teutonic tribes of Central and Northern Europe. The Celts, in fact, had reached a com-



paratively high degree of Civilization, more in Gaul, it is true, than in Britain; while, beyond the Rhine, the Germans had scarcely progressed beyond the barbarism of the nomadic races.

It was not without a sharp struggle that Gaul and Britain yielded to the Roman arms, and adopted the Roman Civilization. Julius Cæsar was the Roman conqueror of Gaul; he was also the first of Roman leaders to land in Britain. Twice he invaded that country, and advanced beyond the Thames, defeating the forces that were opposed to him in several pitched battles. But his conquests were not permanent. Not very long afterwards, however, in the reign of the Emperor Claudius, the Romans again landed in Britain, this time to remain; and soon their dominion was extended from the English Channel to the foot of the Grampian Hills in Caledonia, the present Scotland. The Highlands of Scotland, however, they never subdued; nor did the Roman arms ever reach the sister island of Ireland.

Celtic Britain, like Celtic Gaul, when once conquered and aggregated by the Romans to their vast empire, became intensely Roman, more Roman even than Italy itself. The Roman Civilization was speedily introduced, therein including that most civilizing element of it the Roman Jurisprudence, and in course of time also the Christian Religion; and Romanized Britain, like all the other Romanized Celtic nations, took most kindly to it. Then it was that her great roads were constructed, and most of her great cities founded. Britain even gave rulers to the Roman Empire, and contributed not a

little to the strength and power of the Roman dominion in other quarters of the world.

But in A.D. 427 was presented the strange spectacle, strange at all events to Roman eyes, of the voluntary withdrawal of the Roman legions from a country which had constituted an integral portion of the Empire for nearly four hundred years. All the frontiers of the Empire were at the time subject to the constantly increasing attacks of the Barbarians, and these had even penetrated into Gaul and Italy and Spain. The Central Roman Government at Ravenna had no longer the troops wherewith to guard so distant a province as Britain, and the Britons were left to themselves, to order their affairs as they pleased.

The sequel of their history for two hundred years and upwards is involved in obscurity and fable. Only this much is known with certainty—that the government, whatever it was, which the Britons set up after the withdrawal of the Roman legions, proved to be feeble and inefficient; that the Scots and Picts from the Highlands of Caledonia broke through the frontier lines of fortification, and greatly harassed the disorganized Britons; that, in order to repel their northern invaders, the Britons availed themselves of the services of piratical bands of Angles, Saxons, Jutes, and other tribes from the northern coast of Germany who were then making their appearance on the shores of Britain; and that these Teutonic bandits, with the characteristic faithlessness, dishonesty and treachery which uniformly marked the conduct of all the hordes that overran the Roman Empire, soon turned their arms against

the people into whose service they had entered, and conquered the greater part of the country for themselves. The Anglo-Saxons, by which composite name these different Teutonic conquerors of Britain have become known, were not content to imitate the course pursued by the cognate tribes of the Franks, Goths and Vandals in France, Spain and Italy, where the previous Latin and Romano-Celtic population was only partially dispossessed of its lands, and was permitted to come into convention with the Teutonic invaders, in such manner that both were permitted in a measure to continue their respective holdings and to enjoy such security of person and property as the barbarous conditions of the situation would admit. On the contrary, with a thirst for blood and slaughter unexampled even in those days of blood, the Anglo-Saxons almost wholly exterminated or expelled the Britons from all the eastern part of the island; and these latter retired to the mountainous districts of the West, into Wales, Cumberland, Cornwall, Devonshire, and into Armorica or Brittany in France, where they found a kindred people.

The contest between the Britons and the Anglo-Saxons lasted several centuries; but the latter almost constantly gained ground, being reinforced by new recruits from Germany, and one by one established their seven petty principalities known as the Heptarchy. According as they progressed, Christianity and Civilization perished before them; and the island, except for the little gleam of light which was kept alive in Wales, relapsed into a condition of barbarism worse than had ever prevailed

before the Roman conquest. The cities, churches and public works that had been constructed in the Roman times were in great part destroyed. Even the City of London is supposed by some to have become for a time wholly deserted. Desolation reigned where fertile fields had been, and the camps of savages took the place of a teeming industrial population. The Goths, Vandals, Burgundians, Franks, and other nations that had overrun Southern Europe, had been somewhat checked in their career of destruction by the fact that they professed, and were therefore to some extent controlled by the bastard Christianity which had been propagated among them by the emissaries of Arianism. The Anglo-Saxons were thorough pagans, imbued only, so far as they had any religious belief, with the worst superstitions of Odinism; and such they remained for upwards of two hundred years, notwithstanding that they were all the time in constant contact with the Britons of Wales, as well as with the Scots of Caledonia, who had in the meantime become Christians.

To any one at all familiar with such history as we have of the Anglo-Saxons during this period of rude barbarism it is perfectly plain that they had neither civilization of any kind, nor any institutions from which it was possible to evolve even the simplest principles of Civil Liberty. The Anglo-Saxon principalities of the Heptarchy did not differ much, if at all, in their structure of government, from the tribal arrangements of the North American Indians.

But Rome came to conquer England, as she had conquered Britain—this time, however, not in pan-



oply of war,—for the sword was no longer her weapon,—but with the cross of Christianity, to restore the Civilization which Anglo-Saxonism had previously antagonized and rejected. Very different, indeed, from the methods of Julius Cæsar, Agricola, and Vespasian, were those of Augustin the Monk and his associates, commissioned by Pope Gregory in the year 596 to bring the Anglo-Saxons into the Christian fold. We know the often repeated and probably authentic story of the somewhat epigrammatic exclamation of the Pope, when he saw some comely youths of the Anglo-Saxon race in the market-place of Rome, and was told that they were Angli. “*Non Angli, sed Angeli, si modo Christiani,*” said the Pontiff—“Not Angles, but angels, if only they were Christians.” And Gregory immediately resolved upon the attempt to bring the stubborn barbarians within the pale of Christianity.

The attempt was successful. In the course of about 150 years the Anglo-Saxons of the Seven Principalities were induced to accept the doctrines and morality of the Christian Religion as their rule of conduct; and although a very large amount of the northern paganism always remained in the country, many of the Anglo-Saxons justified by their virtues the prognostications of the Roman Pontiff as to the possibilities of their race. We may well question, however, looking back from our present standpoint upon the varied history of that race, whether there is anything in that history to justify the characterization of the race as *angelic*. That epithet applied to the Anglo-Saxons could only be applied in sarcasm.

But let us resume our narrative. We are seeking, with the lamp of reason in our hands, through a dreary desert of rude barbarism and through the quicksands of an imperfect civilization not yet wholly freed from the taint of Odinism, for some traces of the principles of Civil Liberty; and we are seeking in vain. Both the word and the thing are equally unknown in these pages of Anglo-Saxon history.

In the year 827 the petty principalities of the Anglo-Saxon Heptarchy became all merged in the one Kingdom of England under Egbert of Wessex, and England, the England of the Anglo-Saxons, first began to be a nation. It was an era of consolidation in the island, for about the same time (A.D. 834) Kenneth MacAlpin united under his own sceptre all the petty principalities of Scotland, and initiated the nationality of the northern kingdom; and even in Wales, which had been divided into three principalities, there was a reduction of the number to two. The consolidation of Continental Europe under Charlemagne and the nominal restoration of the Roman Empire by and for him (A.D. 800) may have furnished an object-lesson for this movement towards concentration of power and centralization in Britain. But while the union of the Anglo-Saxons under one government may have served the ultimate purpose of civilization by diminishing the number of petty despotisms in the island, as it undoubtedly did, it cannot be said that there was any appreciable development of liberal institutions, looking to the establishment of anything in the remotest degree resembling Civil Liberty during

the stormy and turbulent period of the Anglo-Saxon Monarchy, extending over 239 years (A.D. 827–1066), of which over a century was passed in contests with the Danes, and 25 years (A.D. 1017–1041) were occupied by the actual conquest and domination of the Danes over the Anglo-Saxons.

But during this Anglo-Saxon period, two public men of more than usual ability and high character, who had both been educated to some extent in the Roman Civilization, and of whom one at least had the advantage of long residence on the Continent of Europe, Alfred the Great (A.D. 871–900) and Edward the Confessor (A.D. 1041–1066), contributed greatly to promote good government and to advance the cause of civilization among the Anglo-Saxons. Alfred and Edward both acquired the reputation of wise legislators, to such an extent as that, in after ages, during the days of Norman tyranny and Plantagenet domination, whenever there was any petition to the sovereign for a redress of grievances, it was generally coupled with a prayer for the restoration of the laws of Edward and Alfred. In consequence of this frequent reference, these two Anglo-Saxon sovereigns of England received the credit of having introduced into the country many legal provisions, which were, in fact, only the evolution of subsequent centuries, and most frequently were only the expression of the desires of the people for better legislation and for relief from the galling tyranny of the Plantagenets.

Both Alfred and Edward indeed deserve the credit of enlightenment beyond their age. They did much to temper the rude institutions of the

Anglo-Saxons, if institutions they can be said to have had in any proper sense of the term. But it is now well-established that the improvements which they made were not so much developments of Anglo-Saxon institutions as introductions from the jurisprudence and the civil polity of Rome and Ireland. From the Brehan Laws of the latter country Alfred derived much of his legislation; from the capitularies of Charlemagne, in which the great Frankish monarch had sought to substitute Roman ideas for the Teutonic usages of his Franks, the good and wise Edward transferred bodily a great part of the legislation which he induced his people to accept. From the latter source it is now well settled that the system of trial by jury, with all its possibilities for good and evil, was derived. That system, so long, so ignorantly and so arrogantly claimed to have been of Anglo-Saxon origin, is now shown conclusively to have been adopted by the Anglo-Saxons from the Franks; and even the Franks did not originate it, for the principle of it is found in the Roman Jurisprudence, and it may have been even of more ancient origin.

The governments of Alfred and Edward were temperate and beneficent despotisms. There was no Civil Liberty in their day. The influence of the great nobles, of course, was felt, as it is felt even in the most absolute of despotisms; but the people as such had no voice in government. In the Anglo-Saxon period, it is true, of England's history, there was no Feudal System, as there was in other nations of Europe; and the people were therefore free from the infamous slavery of Feudalism. That immunity, indeed, was not, as already intimated, greatly



to their credit. The Anglo-Saxons had massacred and exterminated the Britons; the other Teutonic Barbarians had only subjugated the peoples among whom they came. There was no need for the Feudal System among the Anglo-Saxons, because there was no conquered people to be kept in subjection. The system of wholesale slaughter and indiscriminate massacre was much more simple and effectual. What the Anglo-Saxons might have developed from the institutions of Alfred the Great and Edward the Confessor, in the absence of that System which weighed so heavily upon the civilization of the rest of Europe, it is useless to conjecture; for the Feudal System, with all its horrors, speedily and unexpectedly came upon them.

In A.D. 1066, a most memorable year in English history, William the Bastard, Duke of Normandy, otherwise known as William the Conqueror, invaded England with his horde of hungry Normans, worthy descendants of the savage pirates from Norway and Sweden and Denmark, who had infested all the coasts of Western Europe for nearly three centuries with their horrid cruelties and barbarities, and conquered the country in a single campaign, in fact in a single battle, and held it with a strong hand. He established the most tyrannical and galling despotism in all Europe, introduced in all its rigor the Feudal System, then dominant on the Continent of Europe, parcelled out all the lands of England among his greedy followers, and reduced the Anglo-Saxons to a condition of slavery or serfdom, for which probably there has been no parallel in Europe outside of Russia.

His immediate successors—William Rufus and Henry I.—were fitting imitators of his depotism, and under these first three monarchs of the Norman line England was the most absolute monarchy in Europe. In the contest which ensued between the usurper Stephen and the Empress Queen Matilda, and subsequently between Stephen and Matilda's son, Henry Plantagenet, there was the first rift in the clouds that enveloped England as with a dense pall; but the rift was small and almost imperceptible, and the rule of the Plantagenet kings of the Norman race was quite as autocratic as that of the Conqueror himself. Henry II., Richard Cœur de Lion, John Lackland and Henry III. were quite as despotic as any monarchs of their time in Europe; and there was no Civil Liberty in England in their day, nor anything that could by any possibility be mistaken for it by any reasonable man.

And yet there were evidences of a contest for liberty as early as the reign of Henry II. But the contest was not made by the people, or even by the feudal barons, but by the heroic champion of the people, the sainted Thomas à Becket, Archbishop of Canterbury. He alone was bold enough in his age to resist the royal tyranny and oppression. He was called an ambitious churchman by Henry, and by the ruffians and minions who aided the monarch in the infamous work of the prelate's assassination; and he has been so designated by the modern ruffians and minions, who are ever ready, in their writings, to asperse the memory of the champions of truth and right and justice when they have to deal with this por-

tion of European history. But the evidence now is very plain to the impartial mind that the martyred Archbishop of Canterbury was the champion of popular right against the tyranny and oppression of an unprincipled monarch.

Unprincipled Henry II. of Anjou most undoubtedly was, as were all the kings of England of his race. The Plantagenet Kings, as they are commonly called, were not generally without ability; but, as a race, they are probably the most notorious royal line in all history for their utter dishonesty and total want of all moral principle. There was no reliance to be placed upon their honor; they were false alike to friend and foe; they never made a promise that they did not break whenever opportunity occurred and their self-interest seemed to demand the repudiation. This was the character of the whole race, and of each and all its members, from its founder, Henry II., to the last of the line, Richard III.—although, perhaps, we should except from that sweeping condemnation the well-meaning but weak and irresolute Henry VI. of the House of Lancaster. The tyranny of the Plantagenet monarchs, however, was not directed against the people, who at the time were mere serfs and slaves of their feudal masters, so much as against the Church and the feudal barons, both of whom had something wherewith to tempt the cupidity of the royal profligates, their retainers and favorites; and, when the inevitable conflict came, it was a conflict not between the monarch and the people, but between the monarchs on the one side and the clergy and the feudal nobles on the other. It may be said, however, that when-

ever the City of London, which may be assumed to have represented and embodied whatever of truly popular spirit there was in the country in those times, appeared in the conflict, it was always on the side of the clergy and of the cause represented by the Church. It is remarkable, however, how feeble and irresolute the part of the City of London always was in the contest; and it seems all the more feeble and irresolute when we compare it with the bold stand often taken by the great Cities of Continental Europe in defense of their rights.

King John Plantagenet, sometimes called John Lackland, the brother and successor of an almost equally worthless profligate, who has been most unworthily exalted into a hero of romance, and called Richard of the Lion Heart, is generally represented as the weakest and the worst of the Plantagenet race. It is necessary in his case to deal in comparisons. Utterly unprincipled he undoubtedly was; and he depredated alike upon the Church and the feudal nobles, and aroused the antagonism of both, as well as that of the City of London. In the 16th year of his reign, A.D. 1215, probably to England the most memorable year in her history after the Norman Conquest, a combination of the barons and clergy, under the leadership of Stephen Langton, Archbishop of Canterbury, Primate of England and Cardinal of the Roman Church, most worthy successor of the martyred Thomas à Becket, was formed against the King. It was an armed combination; and yet no war was declared, or was intended to be declared. The parties met for conference on the famous field of Runnymede, near



Windsor. King John had with him a large part, perhaps even a majority, of the most powerful nobles, under the command of the Earl of Pembroke, the most influential noble in the realm at the time. Stephen Langton had behind him a compact and resolute force composed of all the orders of the State, and powerfully supported by the retainers of the City of London and the yeomanry of his own County of Kent. King John was reluctant to provoke his opponents to extreme measures, and the result was that he found himself constrained to attach his signature to a document drawn up by Langton, and intended to guard against the recurrence of such oppressions as those of which John had been guilty. This document was the famous Magna Charta, or Great Charter, and through it came the first dawn of English Liberty, of which it has always, and with some appearance of justice, been regarded as the palladium.

The Great Charter, it may be remarked, does not seem to have been so-called on account of its supposed transcendent importance as the foundation of English Constitutional and Civil Liberty, but by comparison with another Charter of minor importance, called the Charter of the Forest, extorted from King John about the same time.

Magna Charta is a document frequently referred to and rarely read. It may be interesting to recur to it with some detail. It comprises 39 articles or chapters, but some enumerate 63 articles or chapters. The copies seem to differ, and the difference appears to have been occasioned probably by the inclusion of the Charter of the Forest, or some por-

tions of it, in Magna Charta. The difference, however, for all present purposes is wholly unimportant. Most of the provisions of the Charter are mere regulations of the iniquities then existing of the Feudal System, and concessions by the monarch to the Church and the feudal nobles; others are concessions by the Church and the nobles to the monarch. The people, as such, and as distinguished from the clergy and the nobles, had no part in the arrangement, except incidentally; but the incident does infinite credit to the sagacity and wise statesmanship of Stephen Langton.

All the provisions of Magna Charta, of course, so far as they are restrictions upon the arbitrary power of the monarch, and so far also as they are regulations of the Feudal System and in restraint of that System, are in the interest of the cause of Civil Liberty; for all checks upon arbitrary power are in that interest. And in this sense Magna Charta deserves all the eulogies that have been pronounced upon it. But when the document is examined in detail, and with reference to its intrinsic value as a Charter of Civil Liberty, it merely serves to bring the blush of shame to our cheeks to think how deeply sunk in the degradation of feudal slavery must have been the men, whose blood flows in our own veins, and who could have set so much store on a document which merely sought to raise them to the level of the comparative freedom enjoyed at the time by the people of France, Spain, and Italy, and even by those of Germany. For Magna Charta proves conclusively the utter slavery into which England had fallen. It gave no rights to English-

men that were not already enjoyed in far greater degree by all the other peoples of Western Europe. But regarded as a proclamation of the limitation of the arbitrary powers of feudal monarchy, the document had immense value and great possibilities, although the seed then sown was soon choked by briars and brambles, and did not actually germinate for many ages afterwards.

Only three provisions of the Great Charter can be said to have been distinctly and positively in the interest of Civil Liberty. These are the first, the ninth and the twenty-ninth. Of these the first guarantees the freedom of the Church, which, to those who fully understand the conditions of those times, means vastly more than what it purports to us to mean, as the equivalent of what we now would designate as freedom of conscience and freedom of religious worship. It meant the upraising of the people by means of the Church, and the gradual abolition of serfdom and feudal slavery in favor of all who sought the protection of the Church. For in those days, as in all other days, there were two parties in the State; but then they were the party of the Church and the party of Feudalism, and the party of the Church was that of the People.

The ninth Article guarantees the ancient chartered liberties of the City of London and of the other cities and towns of the country. And when we recall the fact that these chartered liberties were the remains of old Roman Civil Liberty saved from the ruin brought upon Civilization by the Barbarian Conquest and the establishment of Feudalism, we can the better appreciate the significance of such

a guarantee. The provision also becomes all the more important to us when we remember that our own civil institutions are based more upon the usages and customs of the City of London than upon the usages and customs generally of the English realm, as our law-books will abundantly show us.

The twenty-ninth Article, which has now become by far the most important provision of the whole Charter in its modern development, prescribes that no freeman shall be disseised of his land, imprisoned or condemned, but by the judgment of his peers, or by law. This is substantially and almost in terms the same provision that has been incorporated into our American Federal Constitution, as the Fifth Amendment, that "no man shall be deprived of life, liberty, or property, except by due process of law;" and its purport was to substitute due process of law for the arbitrary will of the monarch. But however beneficial this provision was intended by Cardinal Langton to be, and however overshadowing all others it has now become in importance, it must be conceded that at the time it had not the significance which it has since acquired. Its guaranty was restricted to the "freemen" of England, a term then synonymous with landholders, and which included only the feudal classes and their retainers; and inasmuch as the vast majority of Englishmen at the time were *villeins* or *copy-holders*, the precise equivalent of Russian serfs in our own day, and practically not different from slaves, it is quite apparent that its application was exceedingly limited. It is presumed to have definitely established trial by jury in England; but it was many a



long day before trial by jury, as we now understand it, was established in that country.

The best that can be said of Magna Charta is that it possessed immense possibilities, and that it was a sharp check upon arbitrary powers. For this we are indebted to the master-mind and the patriotic humanity of Stephen Langton. If it be sought wherein he acquired its suggestion, we have to look no farther than the irrepressible conflict between Feudalism and the Roman Civil Jurisprudence—between the State, so-called, and the Church, the former the inheritor of all the barbarous usages, savage customs, and brute force of the Northern Barbarism, the latter the custodian of all that was left of the Roman Civilization. It is a curious fact that the discovery in A.D. 1137, which was 78 years before Magna Charta, of a complete copy of the Institutes of Justinian in the little republican City of Amalfi, in Southern Italy, greatly stimulated the progress of free institutions in the Italian Peninsula; and we have already seen that the spirit of liberty soon, to a greater or less extent, crossed the Alps and pervaded all the other nations of Europe. It is plain where Stephen Langton, himself a Doctor of the Roman Canon Law, and undoubtedly well versed in the Roman Civil Law, derived the inspiration which dictated the preparation of Magna Charta.

Before Magna Charta there was neither Constitutionalism nor Civil Liberty in England. Prior to its promulgation the government of the country was an absolute monarchy—the most absolute, in fact, in all Europe, not even excepting the Russia of that

day—we might almost say an oriental absolutism, were it not that the Christian Religion would not have permitted the existence of oriental absolutism in England any more than elsewhere in Europe. It was only a question of a rigid despotism, like that of William the Conqueror, or of a mild and beneficent absolutism, like that of Alfred and Edward the Confessor. All legislation, all judgment, all power, emanated from the monarch, and were exercised by him without any control whatever by the people. Assemblies of the notables were sometimes called for special purposes, just as the general of an army might summon his principal officers to a council of war for advice, yet without intending to be bound thereby unless its deliberations suited him; but such a thing as participation by the people in the affairs of government was utterly unknown before Magna Charta. There was a Witenagemote, it is true, or General-Council, among the Teutonic Tribes, as there was and is among all barbarian and savage tribes: for in this matter, strangely enough, extremes meet. Extreme democracy is the result of savagery, as well as of the highest civilization: absolute monarchy is an intermediate state. But in the Anglo-Saxon monarchy, which succeeded the Heptarchy, and in the Norman and Plantagenet days, there was no Witenagemote, no parliament, no participation, direct or indirect, of the people in the affairs of government: and any pretense to the contrary is the wildest vagary of the imagination. If, as has been stated, assemblies were summoned from time to time, it was always for a special purpose—to raise revenue for the sovereign,

and for nothing else whatever; and these assemblies were sometimes bold enough, in consideration of the donations which they made to the sovereign for the purpose of revenue, to petition for a redress of any grievances under which the people were supposed to labor; the autocratic expression of the sovereign's will in response to the petition was the legislation that was enacted. But if this be legislation by act of parliament, we fail to see wherein it differs from oriental legislation of precisely similar character.

Magna Chartá was indeed a new departure in the political affairs of England; and yet it was for a long time no more than a *brutum fulmen*, a mere pronunciamiento without practical effect. It did not terminate absolutism or arbitrary monarchy. Every monarch of England, from John Plantagenet down to the last of the Stuarts, swore, and several of them swore repeatedly, to uphold it and to observe its provisions; and every one of them, with possibly three exceptions, perjured themselves by a violation of their oath whenever an opportunity offered itself. The exceptions were the sainted but weak Henry VI., Mary Tudor, and the boy-king, Edward VI., who was too young to become capable of such violation. The provisions of Magna Charta were regarded, whenever the necessities of the monarch dictated a regard for them; they were violated without hesitation whenever it suited the purposes of the monarch to disregard them. John himself violated them almost as soon as his signature upon the parchment was dry. His son and successor, Henry III., a man as utterly destitute of all

honest principles as he himself was, swore a dozen times to observe them, and many a dozen times violated his oath. The hostile Houses of York and Lancaster had but little regard for constitutional guarantees of any kind, except as the occasional pretense of their observance tended to strengthen their respective causes. The Tudors, Henry VII., Henry VIII., and Elizabeth, were the most absolute monarchs of their day in Europe, and governed with the most utter and the most contemptuous disregard of Magna Charta. It was not until, by the Renaissance of Literature in Southern Europe and the Discovery of America by Christopher Columbus, the principles of Civil Liberty were everywhere revived on the Continent of Europe, that England at last felt the influence about the time of the accession of the House of Stuart to the throne (A.D. 1603), and Magna Charta was exhumed from beneath the dust of ages which had accumulated over it, and thenceforward received new life from the development of succeeding ages.

It may be that some notice should be taken here, and apparent exception made, of the legislation of Edward I., who did much to improve the laws of England, and to whom writers of school-histories have occasionally, on that account, given the name of the English Justinian, as though he deserved to stand by the side of the great Roman Emperor, who has linked his name forever to the Codification of the Civil Jurisprudence of Rome. Edward undoubtedly introduced considerable improvements in the laws of England as he found them existing in his day; and he, too, swore at his coronation to uphold



Magna Charta, and yet did not hesitate repeatedly to violate his oath. He was a man of ability, but his unjustifiable wars upon France and Scotland should cover his memory with eternal infamy. The improvements which he made in the administration of the law—for it was to the matter of administration rather than to the character of the law itself that his improvements were directed—undoubtedly tended to advance the civilization of England, and in that sense was a gain for humanity; but it is wholly unnecessary to consider the reign of Edward I. in connection with the subject of constitutional government and civil liberty. His was a personal autocratic government, no worse, but no better, than that of his predecessors and most of his immediate successors.

The great contest of a hundred years between the rival Houses of York and Lancaster for the throne of England, commonly known as the Wars of the Roses (A.D. 1399–1485), did vastly more for Civil Liberty in England than did Magna Charta; for it drove out one king after another, diminished thereby the royal prestige, and destroyed the great Norman barons, the great support of Feudalism and of the feudal principle. It is very true that it was sought to supply the places of the Norman barons with new men; but these new men were often from the ranks of the people, partisan leaders and successful adventurers, to whom Feudalism was no longer the same system which it had been to their predecessors. They took the places of their predecessors, but they could not wholly impersonate their principles. The Battle of Bosworth Field (A.D. 1485),

by which the great contest was terminated and the House of Tudor raised to the throne in the person of Henry VII., practically destroyed both York and Lancaster, and with them the old feudal monarchy. And although the despotism of the Tudors (A.D. 1485–1603), during the period of 118 years in which they ruled, was greater than that of any English monarch since William the Conqueror and his immediate successors, yet the suspicion of illegitimacy which attached to their origin and the growth elsewhere of free principles, which we have already noticed, made this, the darkest hour for English Civil Liberty, the hour before its dawn.

Strange as the assertion may seem, it is nevertheless the fact that the dawn of Civil Liberty in England was contemporaneous with the accession of the Scottish House of Stuart to the throne of that country (A.D. 1603). But the proof of the fact is easily accessible to those who would find it.

Have the Stuarts, then, been maligned? Or, were they merely the victims of circumstances? Their very name has almost become synonymous with despotism and arbitrary power. They were, or some of them, at all events, were strenuous advocates of what has been called “the divine right of kings,” the right of kings to reign and govern autocratically regardless of their people, and without any voice by the people in the matter of government. There were four of them (A.D. 1603–1688); and one of the four went to the scaffold a victim of his autocratic doctrine, and another went into exile for the same reason. The two who suffered, it may be remarked parenthetically, as usually happens in

such cases, were better men than the two who escaped. And yet it is entirely true that to the Stuarts the cause of humanity, of civilization and of Civil Liberty, owes a thousand times more than it does to all the Tudors and Plantagenets that ever lived. Considered absolutely and upon their own merits, they certainly do not deserve very great consideration from us. Three of them were narrow-minded bigots; the other was a *roué* and a black-guard. And yet they were all infinitely less arbitrary and infinitely less despotic than their immediate predecessors, the Tudors, of whom at least two, Henry VIII. and Elizabeth, were the very impersonation of despotic monarchy.

The Parliaments, which had occasionally and at irregular intervals been convened in preceding reigns, not to enact legislation, but for the sole purpose of supplying the sovereign with the revenue which he required, and which had occasionally extorted a promise of a redress of grievances as the condition for the supply of the desired subsidy—and the redress did not often go very far beyond the mere promise, since the petition for redress was usually repeated at the assembling of every Parliament—now became regular, were convened at regular intervals, and assumed to enact general legislation and to take the initiative in such legislation. There can be no question that this power of the Parliament began with the Stuarts. Nor can there be any question that the best part of the legislation which our American colonists brought from England with them, and which was found to be suited to our altered conditions and our free institutions, was

legislation enacted in the reign of the Stuarts, and with their assent. If you will turn to our American statute-books, you will find statutes in force in some parts of our country to this day which purport to have been enacted by kings of England in the Parliaments. Some of these are as old as the reign of Henry III., the son and successor of King John, who signed Magna Charta. There is one important one passed in the reign of Henry VIII., a statute which authorized the disposition of real estate by will, a thing which was not allowed before and which was antagonistic to the feudal law, but which Henry purposely encouraged for his own selfish purposes and his own personal emolument, and without reference to the beneficial purpose which it actually subserved in sapping a fundamental principle of Feudalism. Two or three important measures also characterized the reign of Elizabeth. But all these were of a character that might have emanated from the most absolute of monarchs ; they had but little bearing upon the Civil Rights of man, and were not intended to foster or protect those rights. On the contrary, they seemed in all cases to have had a sinister motive on the part of the sovereign, and to have been only incidentally effective for good. It was not so with the legislation that distinguished the reigns of the Stuart monarchs.

Even if some of the legislation of the Stuart period, such as the statute of limitations, the statute of direct descents, the statute to provide for the administration of the estates of deceased persons, the statute to prevent frauds, and other like statutes, all of which are in force with us, or if not in force with



us, have only been superseded by others of precisely similar tenor, are colorless, so far as respects the civil rights of man and the development of civil liberty, yet there are statutes of this period, legislation initiated by Parliament, and not merely emanating from royal grant or royal suggestion, although, of course, necessarily receiving the royal assent, which is not so colorless. Two of these might be specified: one designated as the Petition of Right, which enacted that no taxes should be imposed except by act of Parliament, and that no freeman should be imprisoned or disseised, except by due process of law, was passed in the third year of the reign of Charles I. (A.D. 1628), received the full sanction of that monarch, and was, as is apparent, to a great extent, only a re-enactment of the provisions of Magna Charta; and the second, known as the Habeas Corpus Act, enacted in the 31st year of Charles II. (A.D. 1679), by which it was made the imperative duty of the judges of the courts to give speedy and summary relief from all unlawful imprisonments. If the Stuart sovereigns were at heart opposed to these enactments as encroachments upon their royal prerogatives and limitations upon their power, as is not at all impossible or even improbable, they should at all events receive the credit of having fully and unreservedly assented to them, and thereby to that extent promoted the cause of Civil Liberty. Certainly no sovereign of England before them, and none after them for more than a hundred years, participated in the enactment of any laws more important to the cause of human freedom.

But there is another fact that should be mentioned

here to the credit of the Stuarts, and which perhaps even more nearly concerns us. After the discovery of America by Columbus, Spain, Portugal and France immediately became active in the work of the exploration and colonization of the New World. John and Sebastian Cabot, Venetians, in the service of Henry VII., animated by the great exploit of Columbus, went upon a voyage of discovery to the northern part of the newly found Continent, and sailed along the American shores from Newfoundland to Virginia. But beyond this England did absolutely nothing towards the colonization of the New World for nearly a hundred years. She was by no means inactive, however, but her action took the shape of piratical depredation upon the commerce of Spain and upon the Spanish settlements. Drake, Frobisher, Amyas Leigh, Raleigh, and other pirates (outlaws and freebooters, all of them, such as would now be summarily executed by any civilized nation), under the sanction and connivance of that queen of pirates, Elizabeth Tudor, who participated in their booty, depredated for many years upon the Spanish commerce in America, without any honest attempt by any of them, or by any other Englishman, to open up America to English commerce or to English colonization. It is true that Raleigh at last (in A.D. 1585) attempted to plant an English Colony on the Island of Roanoake, off the coast of North Carolina; but there is very grave question whether even this was not rather an attempt to establish a convenient base of operations from which to carry on his depredations against Spanish-American commerce than an honest effort

to plant an English Colony in America. At all events, it is a curious fact that the colony very soon disappeared under circumstances of mystery that have never been solved; and that early in the reign of James I., when this species of piracy had become somewhat discredited and the new sovereign was less accommodating or had more sense of political and international honesty than his predecessor, Raleigh was arrested and committed to the Tower of London on a charge practically of piracy, and afterwards executed.

It is also a fact that it was the first of the Stuarts, James I., who granted the first charter for the establishment of an English colony in America, leaving out of consideration the apparently fraudulent attempt of Raleigh; and that each and all our colonial charters, except one, the last of them (that of Georgia), which, however, was merely an imitation of the others, were granted by the Stuart kings of England. Prior to the time of the Stuarts, not only did the English Government not encourage or foster emigration or colonization, but it absolutely prohibited both, and sought even to fetter commerce by odious and vexatious restrictions. It seems to be ignored or studiously concealed by the ordinary historian, that at the time of the accession of the Stuarts there were several statutes in force, some of them enacted or re-enacted during the Tudor period, whereby it was prohibited under severe penalties to any Englishman to go out of England at any time for any purpose without the express permission of the sovereign. It was reserved for the Stuarts, virtually, to repeal these barbarous and unreasonable

enactments by the grant of general permission to go out of the country contained in the charters granted for the planting of the American Colonies.

It is probably unnecessary to go beyond these enactments to show the utter absence of all Civil Liberty in England before the time of the Stuarts; and sufficient has been said to show the great service rendered by the Stuarts to the cause of Civil Liberty by the nullification of them and by the other enactments to which reference has been made.

The question then recurs, why the Stuarts acquired the bad reputation which they hold as the upholders of arbitrary power and absolutism in government. The apparent anomaly is not very difficult of explanation, although it is complicated with questions that would carry us, perhaps, beyond the limits of our subject, but which, when examined, would do no great credit to England's boastful claim of being the home of Civil Liberty. Suffice it to say that in England, in the days of the Stuarts, substantially the same thing occurred that happened afterwards in France in the days of Louis XVI. and the French Revolution. The Stuarts were the inheritors of an infamous system. The world had moved, and the system had become odious. They had not moved with the world; at all events, they had not moved as rapidly as the world had moved. Their professions, indeed, were worse than their actions. Their actions were infinitely better than those of the Tudors and Plantagenets; their professions, which were only in the line of the uniform course of conduct of the Tudors and Plantagenets, were



out of place in the advanced age. This, after all, is the sum total of the indictment which History has found against them. As we have said, we have no defence for the Stuarts, except by comparison; but it is an infamous perversion of history that their memory should be loaded with opprobrium and obloquy, while monsters of vice, like most of the Tudors and Plantagenets, should have no word of animadversion uttered against them for crimes precisely of the same character as those for which the Stuarts have been condemned, but of far greater magnitude.

What we desire here especially to say, as our conclusion of this first chapter of English History in connection with the subject of Civil Liberty, is that, notwithstanding the promulgation of Magna Charta, and notwithstanding the assembling of one Parliament in A.D. 1264, to which the name of Parliament is truly applicable, and to which we will have occasion to refer in our next lecture, there was no such thing as Civil Liberty in England, certainly no Civil Liberty worthy of the name, nothing in any degree worthy to be compared with the Civil Liberty enjoyed elsewhere in Europe, before the accession of the Stuarts to the English throne. How much there was afterwards, for nearly two centuries, we shall have occasion to see. But from what we have said, and from what we have indicated as having occurred in the reign of the Stuarts, we are fully justified in regarding the Stuart period as that of the dawn of Civil Liberty in England. It was long before the meridian came, if it has come yet. The morning, at all events, was clouded by storm

and obscured by strife. To trace the vicissitudes of Civil Liberty and Constitutional Government through the course of that morning will be the purpose of our next lecture.

## LECTURE IV.

## THE DEVELOPMENT OF CIVIL LIBERTY IN ENGLAND.

*(Continued.)*

WE have stated that with the accession of the Stuarts to the throne of England came the dawn of Civil Liberty in that country. The substantial proof of the statement is the fact, which no well-informed man can controvert, that then, and not before then, did constitutional and parliamentary government in England begin. It is very true that absolutism did not then cease; and that not without a long and weary struggle, war, violence, religious intolerance, and the most outrageous violation of the principles of Civil Liberty by those who claimed to be their devoted adherents, were those principles finally established. Their development was not an evolution of pre-existing conditions, as most English writers would have us believe, but the result of extraneous influences, to which it may be proper now briefly to refer.

Among the most potent of these influences we have already indicated the Discovery of America by Columbus and its colonization by Europeans seeking a greater measure of freedom than was allowed them under feudal conditions in their own countries. Hemmed in by the iron despotism of the Tudors and their rigid enactments, which confined Englishmen to their own little island, and would not per-

mit them to go out of it, England remained for more than a hundred years after the Discovery totally inactive in regard to America, except such nefarious and infamous action as we have indicated of piratical depredation upon Spanish Commerce and murderous raids upon the Spanish settlements in America. But when the Stuarts commenced the work of colonization, granted their exceedingly liberal charters, and nullified the barbarous statutes of previous monarchs, which had attempted to draw a Chinese wall of circumvallation around England, by granting general authority for emigration to the New World, the new era was, in truth, ushered in for Englishmen, and the door was opened for the enjoyment by them, also, as well as by the other peoples of Europe, of the Civil Liberty for which the New World offered an inviting prospect. And not only was the door opened for the establishment and enjoyment by them of Liberty in the New World, but the opportunity was likewise afforded for the reaction upon England itself of the conditions so established in the New World, although that reaction came slowly and almost imperceptibly, and only co-operated incidentally in the struggles which immediately followed in England. The more immediate causes of the struggle we have to seek elsewhere, and they necessitate our reference to an event which cannot be passed over in any treatise upon the subject of the development of Civil Liberty, although the influence of the event itself in every aspect of it remains, and will no doubt continue to be, a subject of rancorous and bitter controversy.

Twenty-five years after the Discovery of America



(A.D. 1517) was commenced, in Germany, the great revolutionary movement in religion known as the Protestant or Lutheran Reformation, directed against the alleged corruptions of the Church of Rome, then the only existing form of Christianity in Western Europe. The movement was initiated, as we well know, by Martin Luther, a priest of the Roman Church and a monk of the Order of St. Augustine, and soon affected a large part of Germany, leading to great commotions, not only of a religious, but likewise of a civil character, and involving all the States of the German Empire and the Empire itself. Luther very soon had associates and imitators. Among the latter the most prominent were John Calvin in Geneva and John Knox in Scotland, both likewise priests of the Roman Church. The Reformers not only antagonized the Church of Rome, but likewise each other; and each had his own doctrine and his own religious scheme. By their efforts one-half of Europe was taken away from the Church of Rome. Most of the States of North Germany adopted Lutheranism; one-half of the Swiss Cantons, several of the Rhine provinces, the States of Holland and Scotland accepted some phase of Calvinism, while there there was a large infusion of Calvinism both in France and England. France, however, nominally remained Catholic, as likewise did Spain, Italy, half of Switzerland, South Germany, Hungary and Poland. Henry VIII. of England at first took strong ground against the Lutheran movement, and wrote, or more probably caused to be written in his name, a pamphlet against the German Reformer, which procured for him from Rome

the title of Defender of the Faith, which, notwithstanding his subsequent change of position and the intense hostility of most of his successors to Rome, he and they have continued to this day to bear, with an absurd inconsistency that is almost ludicrous in its character. Afterwards, however, Henry broke with Rome, set up a movement of his own, and established an independent Church in England, with himself as its head, but without any very great change of the Roman doctrine. Elizabeth confirmed the separation, and procured the establishment of a religious system which was a combination of the Lutheran and Calvinistic theories, and which has since been continued as the State religion of England. More than half the people, however, for a long time in secret adhered to the old faith; and Calvinism, pure and simple, as professed in Scotland and Geneva, and partly in Holland, soon numbered many adherents.

The Reformers had no dogmatic union, or bond of cohesion, among themselves. They were only united in antagonism to Rome, and in protesting against the standard of dogma and morality set up by the Roman Church; and it is this one element of union of protestation against Rome that has given to the movement the name of the Protestant Reformation, by which it is usually known.

With the religious aspect of this Protestant Reformation, with the criminations and recriminations that have arisen from it, with its motives, results, justifications, palliations, excesses and defects, if such there were, in a religious sense, we have nothing here to do, and it would be entirely outside

of the scope of our subject if we attempted to deal with it in any such connection. But most of the adherents of the Reformation, not all of them, and most of those who in logical sequence have rejected not only the dogmas of Rome, but all dogma, whether it came from Rome, or Wittenberg, or Geneva, have ever been loud in their assertion that the Protestant Reformation was a movement in the interest of Civil and Religious Liberty, the greatest movement in fact for human freedom that has ever taken place. They claim that by it the shackles which Rome would have placed on the human intellect were stricken off, that freedom of conscience was established, and religious liberty, and ultimately civil liberty, were secured for all time. And this assertion has been so frequently repeated and so generally accepted, that it necessarily forces consideration of the question of its correctness.

Apart from the fact that there is not, and cannot be, any such thing as religious liberty in the sense in which this assertion has generally been made, inasmuch as no more in religion than in science, mathematics or art is the human mind *intellectually* free to reject the known or established truth, in no sense whatever was religious liberty, or freedom of conscience, established, or even sought to be established, by the Protestant Reformation, and it is only an afterthought to claim that the Reformation had any such purpose. The Reformers never pretended to establish religious freedom, or freedom of conscience of any kind, except for themselves. Each and all of them claimed to be right, and that Rome was wrong; but dissent from their own sev-

eral opinions they persecuted mercilessly when they had the power so to do. John Calvin caused Servetus to be condemned and burned at Geneva for daring to differ from him in some of his opinions; and this was not an isolated case, but an illustration of their general treatment of each other, as well as of their Roman opponents. They never hesitated to bring the civil power to aid them in the enforcement of their opinions and to persecute dissenting opinion as treason to the State. The immediate result of the Reformation was to establish State Churches throughout all Central and Northern Europe in the place of the Universal Church of Rome, which at least had the merit of bringing the nations together in a common worship, instead of separating them into antagonistic and bitterly hostile communities. Every State in Europe which adopted the Lutheran and Calvinistic system in any of its phases made the ecclesiastic organization a part of the machinery of the State, and relentlessly persecuted, even to the extent of extermination, all rival or antagonistic systems. And this continued to be the policy of the nations, including England, for three centuries and down to the period of the great upheaval of the French Revolution. It was late even in the present century before several of the nations relaxed this policy, and not many of them have entirely abandoned it.

In the face of these conditions, to say that the Reformers established religious liberty, or that the Reformation had the effect of introducing freedom of conscience into Europe, is an evidence either of gross ignorance or of still grosser prevarication.



The Reformers themselves pretended to nothing of the kind. Nor did they pretend to act in the cause and for the interest of Civil Liberty. Religious Liberty is an essential element of Civil Liberty, and Civil Liberty without freedom of conscience would be a patent and palpable absurdity. But even if they could be separated, it is still the fact that all the nations which adopted the doctrines of the Lutheran Reformation, together with England, forthwith became absolute and despotic monarchies, and all but England so remained down to the present century. Calvinism, it is true, allied itself from the beginning with the principles of Democracy, and to that extent undoubtedly promoted the growth of Civil Liberty. But the Democracy which it favored was a democratic Theocracy based upon a misunderstanding of what constituted the Commonwealth of Israel. It was a Democracy ruled autocratically by the ecclesiastical organization of its Church; and a worse despotism probably cannot well be conceived. This was the kind of government which Calvinism set up in the Swiss Cantons of which it obtained control, in Holland, to a certain extent, and as far as it could in Scotland; in England when it obtained control there during the period of the so-called English Commonwealth; and we had a specimen of the same kind of democratic theocracy in our Puritan Commonwealth of Massachusetts.

Certainly whatever other benefits the Protestant Reformation may have conferred upon mankind, neither Civil nor Religious Liberty can be enumerated among them. On the contrary, it may be

confidently asserted that its immediate effect was to put back the cause of Civil Liberty in Europe for three centuries, and to re-establish for a time the principles which we have heretofore designated by the name of Odinism. It is no answer, of course, to this statement that, during the same three centuries, the cause of Civil Liberty also retrograded and absolutism became more dominant in those countries which declined to follow the Reformers in their movement. There would be plausibility at least in the argument which would attempt to show that this, too, was the result of the Reformation. But the subject is one which it is unnecessary further to follow. It is sufficient to have called attention to the fact, which history conclusively proves, that there is no foundation for the claim that the Protestant Reformation advanced in any manner whatever the cause of Civil Liberty, and that the very reverse of this proposition is true.

England, with which we are more especially concerned at present, constituted no exception to our statement. The condition of England in the great religious movement of the Sixteenth Century was peculiar. There were but very few of the people of that country who had any sympathy with the movement in itself, and, as we have seen, the king, Henry VIII., caused a pamphlet to be published against it. If, in order to subserve a disgraceful purpose, which is well known to us, he subsequently assumed a position antagonistic to Rome and compelling him to a tacit alliance with the Lutheran movement, he still repudiated the doctrines of the German and French Reformers. His purpose was

apparently to maintain the doctrines of the English Church unchanged and in substantial accord with those of Rome, but to set up a separate ecclesiastical organization independent of Rome, with himself as its head. And the same purpose, it seems, was that which animated his daughter and successor, Elizabeth, who effected the permanent separation of England from ecclesiastical communion with Rome. It is a well-settled fact that neither of these two sovereigns gave any intellectual adhesion to the doctrines of the Continental Reformers. But their position was one too inconsistent to be maintained; and the practical compromise which went into effect in England was the continuation of the previously existing form of ecclesiastical organization, with the acceptance of a doctrinal code containing a combination of the Lutheran and Calvinistic theories. This was the State or official church, formal adherence to which was sought to be enforced by severe penalties, directed especially against those who remained faithful to their ancient creed and to the Roman Church, but which to some extent were made to apply to all dissenters.

The Calvinistic theory in its purity, however, was embraced by a great many persons in England; and Calvinism, better known in England as Presbyterianism, of which Puritanism was only one of the phases, grew strong enough, in the time of the Stuart kings, to embrace about one-third, or perhaps even nearly one-half, of the Protestant population of the country. Many Englishmen, in the reign of Elizabeth, had gone over to the Netherlands to aid the revolted people of that country in their long

and bitter struggle against Philip of Spain for the independence of their country. There they had imbibed the tenets of Calvinism and a spirit of insubordination to all authority that was not in precise accordance with their views. The influence of the Netherlands upon England, and especially upon the City of London, had at all times been great. It did not fail of effect at this juncture. The religious fermentation, the clash of Calvinism with Anglican Ecclesiasticism, the absurd and pedantic pretensions of the Stuarts, which were greatly worse, however, than their actions, the disposition of the Parliament to use its newly discovered and gradually increased power, the infusion of a large Presbyterian element into that body,—all these, and other cognate circumstances, in the reign of the second monarch of the Stuart line, Charles I., precipitated a conflict between the King of England and his Parliament which soon resulted in civil war, the triumph of the parliamentary party, and the execution of Charles upon the scaffold,—an execution probably as unjustifiable as that of Louis XVI. of France in later days by the howling demons of the French Convention. Both executions undoubtedly served a good purpose in the cause of civil liberty by the rude shock which they gave to the doctrine of the divine right of kings; but better results could have been produced by more rational and moderate measures. The triumph of the parliamentary party in England for a time overthrew the monarchy, but it did not immediately inure to the benefit of civil liberty. On the contrary, its immediate result was to enable the ablest, the most unscrupulous, and the



most unprincipled hypocrite that ever ruled the destinies of a people, to grasp the power that had been wrested from the hands of the weak Stuart, and to establish and maintain for seventeen years a military despotism of the most galling character. Oliver Cromwell's Commonwealth had even less of civil liberty in it than the despotic monarchy of Henry VIII. and Elizabeth. He and the other revolutionists who had contributed to the overthrow of the monarchy pretended a great regard for civil liberty; but an intolerant military despotism was but a poor realization of that pretense. They claimed freedom for themselves, but they opposed with fine and imprisonment, with banishment, and even with loss of life, the attempt to exercise it by others.

The age was an age of hypocrisy and falsehood. Let us pass from it.

The Stuarts were restored (A.D. 1660) only to be driven out again in a few years (A.D. 1688). The same contest was continued, only in somewhat modified form. James II., the fourth and last king of the house of Stuart, who was the victim of the new revolution, was impolitic, unwise, and utterly unfit for his position; but he loved Civil Liberty better than the clique of dishonest politicians who drove him into exile. The Revolution of 1688, by which James was driven out, and his son-in-law, William of Orange, Stadtholder of Holland, placed on the English throne, was caused and conducted by some of the principal Whig families of the English aristocracy, who sought to subordinate the monarchy to a small oligarchy composed of themselves and their retainers; and this oligarchy, in fact, continued

to hold control of England for nearly a century following. It is not too much to say, what history most conclusively shows, that the men who successfully planned this Revolution were the most unmitigated set of scoundrels in the whole range of English history. And William of Orange, a man undoubtedly of great ability, was the worthy recipient of the fruits of their successful conspiracy.

The consummation of this Revolution was signalized by the enactment of a measure to which the name was given of a Bill of Rights, and the acceptance of which by William was made a condition of his appointment to the vacant throne. It has been greatly lauded as a declaration of sound political principles, as a just limitation upon monarchical power, as a constitutional settlement for all time of reliable guarantees for the preservation of English Civil Liberty, in fact as a second Magna Charta. A grosser falsehood has never been uttered. This pretended Bill of Rights, it is true, limited the power of the monarchy, and dealt in some glittering generalities about the freedom of the people and Civil Liberty, and thereby, at all events, manifested that the idea of Civil Liberty had taken deeper root in the minds and the hearts of men; and it is no doubt true, also, that a certain amount of what may by courtesy be called constitutional government was secured by it for England, which the brutal stupidity of the Hanoverians, who soon afterwards succeeded to the throne, enabled the oligarchy to confirm and perpetuate. But a grosser violation of all just and honest civil right, and therefore of civil liberty, than this misnamed Bill of Rights, it would be difficult

to imagine. It was a measure of Civil Liberty precisely as the farcical and yet blood-stained Commonwealth of Oliver Cromwell was a state of civil liberty. It was a freedom simply for the class in power, and disfranchisement for all others—and not only disfranchisement, but the most brutal penal laws followed upon it against all dissenters from the Established Church. For this time it was the Established Church that triumphed; under Oliver Cromwell it was Presbyterianism.

For nearly a century after, this proscription, civil and religious, enforced by the severest pains and penalties, excluded upwards of one-half, perhaps even as much as three-fourths, of the population of England from any voice whatever in the management of the affairs of their country, and kept that management, where the Revolution of 1688 had placed it, in the hands of an oligarchic *coterie*, which not only constituted the House of Lords, as they called themselves, but likewise wholly dominated the House of Commons, yet in its infancy, and composed in great part of the dependents and creatures of the great aristocratic families. These families controlled and owned the boroughs by which members of the House of Commons were selected,—*rotten boroughs* they were afterwards called, in the beginning of the present century, when altered conditions imperatively demanded their reformation,—and by means of these “rotten boroughs” they openly and notoriously returned men to the House of Commons to do their bidding there as their retainers. It is a curious fact that even such men as Burke and Sheridan and others, at the end of the last century and

the beginning of the present, could not secure entrance into the body of which they became such distinguished ornaments except by the favor of members of the nobility, who directed their election, and at whose bidding they were returned, as of course, by the sheriffs, without reference to any constituency; for oftentimes there was no constituency to elect. It existed only in name. A more outrageous farce was never acted under the name of Civil Liberty. That Civil Liberty and substantial parliamentary and constitutional government were evolved from such fraudulent conditions was the result of circumstances not entirely foreseen or anticipated by the oligarchy.

First among these circumstances may be enumerated the division of the oligarchy itself into factions, on the opposing lines of conservatism and liberalism, the more conservative being disposed to uphold monarchical prerogative, and the more liberal by antagonism to the monarchy being driven into closer relations with popular right. Then came the silent but all-powerful influence of the American colonization. Englishmen who desired a larger share of freedom than they enjoyed at home generally sought it in America; and many, with similar desires, who could not gratify them, or were detained at home by controlling circumstances, naturally put the question to themselves why they should not have at home the freedom which their expatriated brethren enjoyed in the New World. The fermentation of this question was accelerated by the growing intercourse between the colonists and their kindred at home, and was greatly increased



by the breaking out of the controversy which led to our American Revolution.

We may notice here, in strong corroboration of the views which we have endeavored to express, that our American Revolution was not occasioned by monarchical oppression, but by feudal and oligarchic tyranny as represented in the English Parliament. We have thought proper, in our Declaration of Independence, to indict the stupid Hanoverian who then occupied the throne of England for the many wrongs and oppressions which justified us, as we alleged, in asserting our independence. Even the most casual examination of the wrongs complained of and of the history of the time will show us beyond all question that it was not George III. who was the aggressor, but the English Parliament; and that if George III. had any part or connivance in them—and most probably they had his sympathy, as they certainly had his formal concurrence—yet the acts were, in truth, the acts of the English Parliament, or of the Cabinet, which was only a Committee of the Parliament. Take the immediate cause of the Revolution, the Stamp Act, and the very mention of it is sufficient to show that it should not be charged against the king so much as against the Parliament which enacted it. There was a reason, to which we will recur hereafter, for directing the indictment against the king rather than against the Parliament; but the fact remains unaffected by that reason, that it was the Parliament, the organ of English oligarchy and English Feudalism, and not the English monarch, that drove us into revolution.

The Eighteenth Century was closed and the Nineteenth Century was opened with a contest in progress the most bitter and the most sanguinary in the annals of Europe since Alaric the Visigoth had crossed the Alps to the capture and plunder of Rome and the Roman Empire and the Roman Civilization had fallen a prey to the Northern Barbarians. I refer, of course, to the French Revolution and the commotions which it occasioned.

Maddened with excess of despotism, and corrupted with excess of impiety, the result of feudal despotism, France had arisen in the might of her blind rage, like Polyphemus in the old Homeric story, and sought to wash out in a deluge of blood and slaughter the crimes of the ages against humanity and human right. She proclaimed liberty, equality and fraternity, in truth the gospel of true democracy and the true principles of Christianity; but in her madness she sought to enforce the truth with the methods of a maniac. We condemn the violence and the sanguinary excesses of that movement; but it is now very apparent that it was necessary that a Napoleon should arise to break with the sword the power of Feudalism which had been reared by the sword. A second Alaric he was sometimes called; but his mission—for we do not hesitate to say that he had a mission from on high—was to undo the work of the first Alaric, who was the pioneer of Feudalism, of which the French Revolution and Napoleon Bonaparte were the destroyers.

The English oligarchy saw its danger in the rising tide of Democracy. With instinctive intuition of

their common origin and common cause, without hesitation, although not without protest from those who took a different view of the revolutionary movement, it cast its lot with the feudal monarchies and with the despots of Europe. Aristocracy and Democracy were sharply brought into conflict. Aristocracy naturally allied itself with monarchy and absolutism; and Democracy, mainly in consequence of its own excesses, found itself for a time compelled to unite its fortunes with those of a selfish military adventurer. The three governmental principles outlined by Aristotle were in active and bitter contest at the beginning of the Nineteenth Century. For a time the democratic movement, at first triumphant, was checked by force of arms. It deserved the check for its excesses. It was not our conservative American Freedom, but Freedom run mad, that then agitated Europe; and it was necessary that it should receive the check which it did, and which came singularly enough at Waterloo through the instrumentality of the English oligarchy.

But the oligarchs had gone too far; or rather liberalism, under the influence of the lesson taught by the revolutionary movement, had become bold enough and strong enough to assert itself even in England. The reaction came. Canning, Fox and Sheridan, and their compeers, became sufficiently powerful to give a more liberal scope to English politics and to English legislation. It was sought to undo in a great measure the reactionary work that was accomplished in Europe after Waterloo; and in England itself an agitation was begun which

did not cease until our own day, if indeed it can be said to have ceased even yet, for a reform of English Politics, and especially for a reform of the House of Commons—which was the designation given in England to the establishment of true Civil Liberty for the first time in that country. For, strange as it may seem to those who have been accustomed to talk and write of Anglo-Saxon freedom as though it were a thing of immemorial existence, the precise date of the birth of Civil Liberty in England can be stated with the utmost accuracy; and that date was the year of the passage of the great Reform Bill, A.D. 1832, which gave England Parliaments worthy of the name, although even then not entirely representative of the people of England. Religious Liberty had been substantially effected three years before by the enactment of what are known as the Emancipation Acts.

We will have occasion to refer again to all this in our further discussion of the subject in connection with the general establishment of Civil Liberty in Europe. We call attention to it here merely to refute the absurd claims of those who, through ignorance or for some worse reason, would have us believe that liberty always prevailed in England, and to show when and how that liberty was in truth established. It must be said in justice to England that, since its establishment, although the spirit of the old Feudalism in that country is not yet dead, the principles of Civil Liberty have been cordially accepted and honestly sought to be carried into effect. And so much is this the case that even we in America have some things to learn in that regard



from England, with all its parade of superfluous monarchy and lagging Feudal state.

We have referred to the Reform Act of 1832 as creating for the first time an English Parliament worthy of the name. We read of Parliaments existing in England from a very early period; and there has been an absurd attempt to derive them by regular succession from the Witenagemote or General Assembly of the old Teutonic tribes. General assemblies have existed, and yet exist, among all tribes of barbarians and savages; it is only by such organizations that the social union of such tribes is maintained. In fact, it may be asserted that if Civil Liberty is the necessary result of tribal or national action in general assembly, then all barbarians are possessed of Civil Liberty. Absolute monarchy has never prevailed among barbarians, although accommodating itself to savages. But the usage of barbarians to meet in general assembly we do not understand to be the equivalent or the source of orderly self-government. Certainly if there is any similarity or analogy of these barbarian assemblies to the representative bodies universal under our modern systems of government, it is, as we have already stated, no more than the similarity of the monkey to man. Neither the Anglo-Saxons in England, nor the Teutonic tribes generally after their conquest of the Roman Empire, continued to maintain such assemblies. The assemblies were unsuited to their new conditions, and speedily gave place to the peculiar organization of Feudalism, and to absolute monarchy.

Parliaments, it is true, were frequently called in

the former days in England, but not to deliberate, not to make laws, not even to suggest legislation. In the Anglo-Saxon days in England, and under the Norman and Plantagenet kings, the work of making laws, as well as that of administering and executing them, was exclusively the province of the sovereign; and if the sovereign ever called his chiefs and nobles around him in connection with the work of legislation or administration, it was solely for the purpose of procuring their advice. In his transactions with the clergy and the Church it was somewhat different; for there he was dealing with a different order of things, and an independent or semi-independent authority, which oftentimes defied him. The Parliaments, if we choose by courtesy to give them that name, were called merely to supply the sovereign with the "aids" or "subsidies," which were the equivalent in those rude days of the taxes which are now imposed for the support of government. And the prevalence of such methods for the raising of revenue, instead of demonstrating the existence of any measure of Civil Liberty, evidences rather the absence of any just or uniform system of taxation and the existence of a condition of rudeness not far removed from the primeval barbarism. Such Parliaments were in truth parleys from time to time between the general of the army, on the one side, and the chiefs and nobles, the tributary cities, and the possessors of wealth, on the other side, as to the amount of money or service which they would render to the general as the condition of protection from pillage. Then, in consideration of the money or service so

to be rendered, the persons assembled in parliament would occasionally presume to petition the king for a redress of any grievances under which they claimed to suffer by the manner of the administration of his government. If these petitions were granted by the king, he would usually so announce by way of a statute framed for the purpose. To call these statutes acts of parliament is a gross misnomer. They do not themselves purport to be anything of the kind, but only acts of the king in parliament.

If no statute was passed, the king would usually in any event promise to take the matter into consideration. And as there seems never to have been a parliament which did not have grievances to be redressed, we have a rather accurate gauge of the utter worthlessness and falsity of these royal promises, which seem to have been made only to be broken as soon as the required *aids* and *subsidies* had been furnished.

Such were the so-called Parliaments which we are told were called in the days of the Norman, Plantagenet, and Tudor Kings. It would be a gross perversion of the truth to attempt to liken them to our modern deliberative assemblies. The best that can be said of them is that they afforded a basis for the organization of deliberative assemblies, that could legislate as well as petition; and that they may possibly be supposed to have given rise to the modern idea that these deliberative assemblies, and not the monarch, should have control of the purse and of the national finances.

Once, and once only, in all the course of English history before the accession of the Stuarts, was

there a parliament assembled in England that could be called a truly representative body, authorized to legislate for the general good of the country; and that was by the agency and through the influence, not of any Englishman or body of Englishmen, but of a French adventurer, Simon De Montfort, a member of a family famous in French history, and who had come to England to seek his fortunes there in the reign of King Henry III. (A.D. 1216–1272), son and successor of King John, who had signed the Magna Charta. De Montfort's abilities brought him into notice and power at court. He was made Earl of Leicester, and for a considerable time controlled the policy of England. Having been driven into opposition, he became the chief of a faction hostile to the court party. Civil war broke out, and Henry was defeated and taken prisoner at the battle of Evesham by De Montfort, and was thereupon compelled by the latter to summon a parliament to take into consideration and to settle the affairs of the realm. Henry was as irresolute and unprincipled as his father John. Indeed he is entitled to contest with John the bad pre-eminence of being the worst monarch in English history. He had sworn repeatedly—we believe that history states as often as eleven times—to support and maintain the provisions of Magna Charta, and he had as repeatedly violated his oath. No reliance whatever could be placed upon his promises, and a general convocation of the estates of the realm was deemed necessary by De Montfort to assure some kind of guaranty for the observance of the royal engagements. Thereupon a Parliament was called in the



same year as the battle of Evesham, A.D. 1264, and was held at London in January of 1265.

This Parliament included not only the great barons and the bishops, but likewise deputies from all the towns and boroughs of England; and it was as nearly a representative body of all the estates of England at the time as the circumstances would probably permit. It was not called to pay enforced tribute to a needy or reckless monarch, but to deliberate upon the affairs of the country, and to adopt measures for their settlement. It was a parliament in the true sense of the term; and it was the work of a Frenchman. But it had no predecessor; nor nor had it any successor before the days of the Stuarts. It was only in the reign of James I., the first sovereign of the House of Stuart, that the parliament of England became a really deliberative body and participated in the enactment of laws. This was the result in a great measure of the circumstances under which James came to the throne, and of the fact that he was a foreigner, and uncertain of his hold upon England; and yet, as we have seen, the consummation was not reached without a sharp struggle in his own reign and in that of his son and successor Charles I. In fact, it was not until the Revolution of 1688, by which James II. was expelled, that the power and position of Parliament and its functions in the State were fully and finally confirmed. If that Revolution contributed anything whatever to the cause of Civil Liberty, its contribution consisted in the establishment of the power of the Parliament and of its independency of the monarchy. The Parliament so estab-

lished, it is true, as we have already stated, was not a truly representative body, but the corrupt organ of a corrupt and unprincipled oligarchy. It had the merit merely of the possibility of being transformed into a really representative body, and the transformation was finally effected in the present century.

The history of the Parliament of England, therefore, for our present purpose, may be summed up in this statement—that from early days there existed a method of levying contributions upon the country which was capable of being made to subserve a greatly more important purpose, that of determining the mode in which the money so raised should be expended; but that this capability was not realized in fact until the time of the Stuarts, nor fully until the present century: further, that parliaments existed from early days, but no parliament before A.D. 1832, in our sense of that word, except the parliament of De Montfort in A.D. 1264, an interval of more than five hundred years before.

There is another institution, usually claimed to be English or Anglo-Saxon, which cannot be passed unnoticed in any treatise upon Civil Liberty in England. This is the system of Trial by Jury, which its admirers and the admirers of the so-called English Constitution sometimes rather extravagantly claim to be the palladium, as they call it, of English liberty.

The system of trial by jury is not of Anglo-Saxon origin. It was simply adopted by England from the institutions of the Franks. This has been conclusively shown, and is no longer a matter of contro-

versy. Let it suffice that England has appropriated it, as she has appropriated a great many other things without giving due credit for them, but has made most liberal and practical use of the appropriation.

The independence of the judiciary under our American Constitutional system we regard as one of the very best features, perhaps the very best, of all our guarantees of Civil Liberty. The English Judiciary is not, and never has been, an independent branch of government. On the contrary, it has always been the creature of the executive power,—although it is very greatly to its credit that, with comparatively rare exceptions, it has always discharged its functions with a degree of fearlessness and practical independence greatly at variance with its theoretical position in the State, for its theoretical position is that of entire dependence on the sovereign. The courts were the king's courts. The king appointed and could remove the judges at pleasure. The king himself could sit in the courts; and James I., a monarch of education and with some knowledge of the law, although with greater pretensions than his acquirements justified, for which he was once called by a witty Frenchman “the wisest of the fools of Europe,” once actually did attempt to sit in the court known as that of King's Bench, greatly to the disgust of the Chief Justice, the celebrated Sir Edward Coke. Even yet the theory is maintained of appointment and removal of the judges at the royal pleasure, and the Parliament is presumed to have no voice in the matter. But as all such appointments are now made by the

Cabinet, which is only a Committee of the Parliament, and the tenure of judicial office is now by long usage for good behavior, which is construed to be for life, the practice establishes a wholly different condition from the theory.

But in the days when the theory possessed more of vitality than it does now, the introduction of such an element as trial by jury into the judicial system may well be assumed to have interposed a substantial check to the power of the sovereign to dispose arbitrarily of the lives, liberty and property of his subjects. It is not apparent that, in civil controversies between individuals regarding their rights of property, the cause of civil liberty could have been greatly affected one way or another, whether the arbitrament of such controversies was by a judge who owed his appointment to the king, or by the combined and co-ordinate action of such a judge and a jury summoned according to his own good will and pleasure by a sheriff who equally owed his appointment to the king. And except for the voice which this system theoretically gave to the people in the administration of justice and the general interest which they necessarily had that justice should be impartially administered, it would seem to be wholly indifferent, so far as the cause of civil liberty was concerned, whether the determination of civil controversies should be by a judge alone, or by a jury alone, or by the peculiar system actually in vogue which requires the co-ordinate action of a judge and jury.

It is very different, however, in criminal cases, and in all cases to which the king, embodying the



power of the State, was a party, especially in the matter of offenses of a political character. Here, if anywhere, the system of trial by jury might well be supposed to interpose a barrier to the exercise of arbitrary power and to afford a reasonable safeguard to the freedom of the individual. Here it was that Magna Charta was especially intended to apply—at least, so it is claimed—when it provided that no freeman should be disseised of his land, imprisoned, or condemned except by judgment of his peers, or by law. But in fact, it is shown conclusively by the whole tenor of English history that, prior to the time of the Stuarts, the system of trial by jury served no such beneficial purpose; and it is not apparent how, when the sheriffs, who had the exclusive selection of the juries at their own pleasure, had their appointments from the court, and received such appointments from year to year at the pleasure of the sovereign, the system could by any possibility serve the cause of civil liberty. When we remember, further, that the provision in Magna Charta was specifically limited to the protection of the “*freemen*,” who were at the time but a comparatively small part of the people, and that the *serfs* and *villeins*, who were the larger part of the people, were excluded from its benefits; and when we remember, also, as far even as the freemen were concerned, how easy it was for the kings to procure bills of attainder for political offenses from subservient Parliaments, and how easy it was to procure the assembling of subservient Parliaments, this whole pretense of the vast civil liberty enjoyed by Englishmen in consequence of the existence of the

system of trial by jury becomes a ludicrous farce. The facility with which the rival Houses of York and Lancaster, and subsequently the monarchs of the Tudor line, procured Parliaments to attain their opponents, to disseise them of their estates, to imprison, condemn, or banish them, is a fact which the most casual reader of English history cannot fail to learn. We never hear or read of any case before the time of the Stuarts where the monarch was balked by the system of trial by jury in the prosecution or persecution of any person whom it was desired by the monarch or his favorites to condemn. The Tower of London was always open to the admission of the proscribed; and if the system of trial by jury was permitted to have its course with ordinary offenders in whom the court or monarch had no interest, it was not for any regard for the principles of Civil Liberty, but simply because it was necessary to have some method of legal procedure in such cases.

It is absurd to speak of trial by jury as having secured civil liberty in the times of the Plantagenets and Tudors. It had no such result, and the system was dispensed with whenever it suited the purposes of the kings to have recourse to other and more arbitrary methods. Both the system of trial by jury and the system of Parliaments convened as deliberative bodies commenced to have practical existence and substantial vitality in the days of the Stuarts; and the two centuries subsequent to the accession of that family to the throne of England were consumed in a contest for the establishment of both, in which the true principles of civil liberty were sadly disregarded by all parties.

It is the evident conclusion that, notwithstanding Magna Charta, notwithstanding De Montfort's Parliament of A.D. 1264, notwithstanding the initiation of the contest for freedom under the Stuarts, notwithstanding the Revolution of 1688 and the boasted Bill of Rights, true Civil Liberty was not developed in England until towards the end of the Eighteenth Century and did not receive formal shape and legal recognition until the first part of the Nineteenth Century, and even then not so much as the result of the development of existing institutions as in consequence of the operation of extraneous influences, notably those of our American Revolution and those of the French Revolution. But, while we deny to England her absurd claim to the possession of free institutions from a time, to use her own favorite legal expression, "whereof the memory of man runneth not to the contrary," we should do her the justice to say that, in the brief time during which she has really had such institutions, her development of them has been had with wonderful rapidity, and her example on the whole has had a beneficial influence on the nations of Europe and on the progress of civilization throughout the world. For her shortcomings and her crimes against justice and humanity it would be easy to draw up a formidable indictment; but for the good that she has done let us give her credit.

## LECTURE V.

## THE DEVELOPMENT OF CIVIL LIBERTY IN AMERICA.

LET us now turn to the land where, as we flatter ourselves, Divine Providence decreed that modern Civil Liberty should have its birth and its best development, in pursuance of the wonderful exploit of Christopher Columbus and the new era which that exploit inaugurated.

At the time of the Discovery, Spain and Portugal were among the foremost nations of Europe in commercial enterprise, in the honors of which they shared with the republican cities of Venice and Genoa; and it is not improper to remark that England at the same period was the most backward and the least enterprising of the nations of Europe. It was natural that the compatriots of the great navigator and the adventurous spirits of the Iberian Peninsula, flushed with their recent successes against the Moors, should be the first to flock to the New World in the work of exploration and colonization. They were not all adventurers, hungry for gold, who forever sought an Eldorado that forever evaded them, like the mirage of the desert. With the conquerors that overran Mexico and Peru with Cortez and Pizarro, or in their wake, came also honest colonists seeking freedom and happiness; and it may be a revelation to those who have derived all their knowledge from the ignorant impostors who have



written school histories for England and the United States, to be told that free institutions were first established on this Continent, not on the coast of Massachusetts Bay, nor on the waters of Narragansett, nor even on the shores of the Chesapeake, but on the banks of the Rio De La Plata and within the shadow of the Cordilleras of the Andes; and that the era of their establishment was the reign of the Emperor Charles V. of Germany and Spain, the ablest and the most enlightened monarch of his age (A.D. 1519–1556), the grandson and practically the immediate successor of Ferdinand and Isabella. The Provinces that have now become the Argentine Republic were established under a constitutional system of government that even at this day does credit to the sagacity and liberality of the monarch; and in fact all his arrangements for the government of the American Provinces show a degree of liberalism and enlightenment not unworthy of the Nineteenth Century. If his wise plans to a great extent failed of effect under his more despotic and less capable successors, that fact should not deprive him of the credit which is justly his due for the beneficent foundation which he effected and which was never entirely overthrown.\*

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\* It is greatly to be regretted that a man generally so fair and impartial as the present Marquis of Dufferin and Ava, in a recent speech in reference to a celebration of the 400th anniversary of the voyage of John and Sebastian Cabot, should contrast that voyage with that of Columbus in terms unfavorable to the latter, by the statement in substance that, lurking in the hold of the Santa Maria and the Pinta were the Inquisition, rapine, and misery to America, while the Cabots were the pioneers of civilization. The bigotry and ignorance which characterize this statement, both equally gross, are, in fact, only the reflex of common English and

Nor should we ignore, in this connection, the establishment by the Jesuits (A.D. 1690) of the famous patriarchal Republic of Paraguay, a republic based upon the principles of Christian Socialism, the only successful organization of the kind that ever existed, an organization that excited the admiration of scholars and statesmen throughout the civilized world, and which only failed when the order of the Jesuits was suppressed by an Anti-Christian conspiracy throughout the Spanish dominions (A.D. 1768).

But our subject leads us, not so much to what the Spaniards did in America, however important that was, as to what the English did.

The Spaniards had been active for a hundred years in America before England began to move at all in the work of colonization. The Portuguese had settled in Brazil, and even the French had appeared on the Saint Lawrence and on the Mississippi before the English began to move. While the voyage of the Cabots followed within a few years that of Columbus (A.D. 1497), and constituted the foundation of the claim of England to the shores of the regions of North America, along which it extended, yet neither Henry VII., who had authorized

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American sentiment on the subject. The answer to all this, and to other unfounded statements of a similar character, is that the English Civilization in America, like all Anglo-Saxon Civilization (or barbarism) everywhere, has resulted in the extermination of the native population, while the Spanish conquest preserved and perpetuated the natives, and has left them at this day a large majority of the population. Which was the more *humane* cause? Perhaps the Anglo-Saxon; but it would be the part of decency not to avow it in this age of the world.

the Cabots to proceed upon their voyage, nor any of the three subsequent monarchs of the Tudor line, Henry VIII., Edward VI., and Queen Mary, followed up the enterprise by any attempt to take possession of any part of the American Continent. They were all too busy with the religious and intestine troubles of England to take part in foreign colonization; and, as we have stated, the policy of England at this time, and during the whole Tudor period, was hostile to foreign colonization, to foreign commerce, and to the withdrawal of any Englishman from England without special license from the sovereign, a policy which was enforced by divers acts of Parliament under severe penalties, which, strange as it may seem, have never been formally repealed, although of course they have long since fallen into desuetude. They form a striking commentary on England's boast of Civil Liberty as of immemorial existence.

In fact, during the days of the Tudors, England had no foreign commerce worth mentioning. Such commerce as there was at the time was in the hands of the Venetians, the Lombards, and the merchants of the Netherlands and of the Cities of the Hanseatic League. London, although even then a great commercial City, was not much more than a mere depot for the merchandise brought there by the merchants of other nations. The carrying trade was done by those merchants, not by the citizens of London; and in Bristol, the second great commercial city of the country, the conditions were not substantially different. The cause of this backwardness it is not difficult to discover. Apart from the foolish

and barbarous policy of isolation, to which reference has already been made, it was unfortunate for England that, when the Wars of the Roses had come to an end by the death of Richard III. on the field of Bosworth and the dynastic troubles which had agitated the country had been composed by the accession of Henry Tudor to the throne, and a breathing-spell might have been anticipated for the recovery of wasted energies, the troubles of the Reformation came, with its disgraceful persecutions, to retard the development of the country for two centuries.

It is true, however, that in the reign of Elizabeth, the last of the Tudors, there was a rather remarkable maritime activity developed in England. We use the expression *maritime* advisedly, rather than the word *commercial*. For the activity to which England then betook itself was simply that of piracy. Drake and Frobisher and Amyas Leigh and Walter Raleigh and their associates did not call their pursuit by that name; but that is what it was, and that is the name by which, if we would be truthful, we must call it at the present day. Their occupation was, with the sovereign's secret consent and with the sovereign's secret participation in the spoils of their nefarious enterprises, to depredate on the commerce of Spain, with which country their sovereign for most of the time was outwardly at peace, to plunder the Spanish galleys laden with gold from America for Spain, and to sack and ravage the Spanish Cities on the coasts of the Caribbean Sea. But it is presumed that Raleigh at last, who was undoubtedly the most capable man of them



all, finding perhaps that piracy had its dangers and its limitations, turned his attention in good faith towards the colonization of such portions of the Northern Continent of America as had not been appropriated by Spain or France. The suspicion, however, has been frequently indulged and freely expressed, that although he turned his attention to the apparently new enterprise and the more honest effort of colonization, instead of piracy, the new enterprise was in reality no more than a blind for the further prosecution of his piratical raids upon Spanish commerce, for which an English colony on the American coast would have afforded him a better base of operations. For this suspicion there is countenance given by the fact of his subsequent arrest and imprisonment, and finally his execution, by the order of James I., who must be credited with more regard for international law and human right than even the blindest partiality of partisanship can attribute to one who has been denominated the "Queen of Pirates," and who seems to have fairly deserved the title, Elizabeth Tudor.

At all events, whatever may have been Raleigh's motive, he solicited and received, in A.D. 1584, a concession from Elizabeth to engage in trade with America and to plant a colony in that country. The first vessel fitted out by him sailed to the coast of Virginia, the name given to all that portion of the Continent claimed by England in consequence of the voyage of the Cabots; and a settlement was effected on Roanoke Island, off the shore of what is now our State of North Carolina. This voyage was followed by four or five others; but the enter-

prise was without result. The colony either perished, or was abandoned, not without some circumstances of mystery that tend to warrant the suspicion of the genuineness of the settlement; and all further attempt for the colonization of America was abandoned during the reign of Elizabeth. The charter or concession granted by Elizabeth to Raleigh, and which is yet extant, does not appear to merit that it should be regarded as an honest effort in the direction of English colonization in the New World.

A new era began with the accession of the house of Stuart to the throne of England, in the person of James I., A.D. 1603. An end was put by that monarch to the systematic depredation by the English pirates upon the Spanish commerce, and the attention of Englishmen was turned in good faith towards the work of the colonization of America and the opening of commerce with the New World.

We have already referred to the fact that the Stuart dynasty has passed into English history, so called, as the embodiment of arbitrary and tyrannical government; and we have no desire to defend the memory of the monarchs of that line from the substantial charges against them taken simply as indictments of their personal conduct. But when we come to compare the conduct of the Stuarts with that of their predecessors, the Tudors and the Plantagenets, or even with that of their stupid and boorish successors, the Hanoverians, the charges, as indicating that the Stuarts were exceptionally arbitrary in government, is simply an atrocious calumny. They were infinitely better in every way than either

their predecessors or successors. It was their misfortune to suffer vicariously for the crimes of the Tudors, as it was the misfortune afterwards of Louis XVI. of France to suffer for the accumulated crimes of three centuries of Bourbonism. Again we desire to say that we do not wish to defend the Stuarts; but we do say that it is a falsification of history to seek to depreciate them to the advantage of the Tudors and the Hanoverians.

America, at all events, owes a debt of gratitude to the Stuarts, which it owes to no Tudors or Hanoverians, and to no English Parliament. For to them we owe all the charters granted for the establishment of our American colonies, except the last, that of Georgia, which was only a reduplication of its predecessors, and from these charters we have raised the stately edifice of American Civil Liberty. For these charters we have to thank no English Parliament: the English Parliaments always antagonized and sought to curtail them. For these charters, and for all that they meant and involved, we have to thank alone the monarchs of the House of Stuart, and their enlightened liberality, strange as that term may seem in connection with the House of Stuart. To a consideration of these charters, and of their meaning, purpose, and result, we have now to address ourselves.

Charters for the incorporation of municipalities and for the formation of guilds and commercial societies were a peculiar feature of the Roman Civil Law; and all the municipal organizations of the Roman Empire, which survived the irruption of the Northern Barbarians, had been effected under char-

ters emanating from the Roman Senate. These charters were grants of powers and privileges, entitling the cities and associations which received them to act for themselves and to make their own rules and regulations for their own self-government, substantially such as are our charters and acts of incorporation to-day: for in these we have not originated anything; we have only revived the old Roman methods of organization. Those methods were antagonistic to the usages of the Northern Barbarians, who found in them the greatest obstacle to the establishment of their Feudal System; and they were antagonistic to the spirit of the Common Law of England, the child of Feudalism. Under that Common Law we find them to have been frequently branded with the odious name of monopolies;—although, so far as the Cities were concerned, Feudalism had found itself even at a very early day compelled to come to terms with them and to recognize their chartered rights. We have seen that the City of London, in the time of King John, had become powerful enough to have its chartered rights recognized and confirmed in the Magna Charta. And we know that it was in the Cities, with their charters of Roman origin, that the spirit of Roman Civil Liberty was preserved amid the overwhelming deluge of the Northern Barbarism.

The Stuart sovereigns, whatever else may be said of them, were men of education, which few of their predecessors and none of their successors could claim to be. They came from a land where the Roman Civil Jurisprudence, introduced there from France, had long been in force. They were favor-



able to the extension of that Jurisprudence in England, as they several times manifested, and notably on one memorable occasion, when the jurisdiction of the Courts of Common Law, representing the Feudal principle, and the jurisdiction of the Court of Chancery or Equity, representing the principles of the Roman Jurisprudence, came into sharp conflict under the leadership respectively of those two most famous men of law, Sir Edward Coke and Francis Lord Bacon, and the contest became so bitter that it was referred to the King, James I., for his arbitrament, and, fortunately for the cause of humanity and of civilization, the Court of Equity and Lord Bacon triumphed, and that most learned, and at the same time most narrow-minded and bigoted champion of the feudal principle and of feudal barbarism, Sir Edward Coke, went into retirement. The King's knowledge of the Roman Jurisprudence had enabled him to decide the controversy in accordance with right and justice.

The system of charters, common under the Roman Jurisprudence, and of which England had to some extent an object-lesson in the Charter of the City of London, James I. found to be a convenient method for the development of the commerce of England, then in its infancy; and possibly also as a convenient mode for the reward of services rendered to himself or to the State. The charters granted by him and his successors for the establishment of the American colonies were concessions in the interest of trade and commerce, although exclusive of all right other than that of the grantees, together with donations of land in the New

World for their benefit and for the benefit of such colonists as they might induce to settle there and to whom they might subdivide the land. They included a general concession to Englishmen to emigrate to the New World, which concession was made in pursuance of the statutes to which reference has heretofore been made, which absolutely prohibited all emigration from the country, except by special license from the King; but it had the practical effect of nullifying all such statutes in favor of those who would go to America.

With these charters and concessions Parliament had nothing to do. The Parliament was not yet strong enough to arrogate to itself any right to intervene in them actively, although it did not fail, with the instincts and the prejudices of Feudalism which it continued to represent, to endeavor to limit and hamper the scope of their operation. Before the present century and down to the year 1837, when Parliament finally took control of the whole subject, it was the theory of the English law that all charters emanated from the sovereign alone. With us in America, even from the earliest colonial times, the theory always has been different, and charters have never been granted except by legislative authority. But in England, as we have stated, down to the year 1837, they always emanated from the sovereign. And so it was with the charters under which our American colonies were established. We think that we are entirely safe in asserting that, if it had depended upon the English Parliament, no such charters would ever have been granted. And we think that we are further war-

ranted by the facts of history in asserting that, of the growth of Civil Liberty in America and of the institutions which contributed to that growth, not the sovereigns but the Parliaments of England were the most bitter and the most persistent enemies.

The charters granted for the establishment of our American colonies were mainly based on the Charter of the City of London ; and we may add that the theory of the English Common Law adopted by our colonists was likewise, in the main, the modified theory of that Law in force in the same City. When it became in good faith the policy of the English Government to attempt to colonize America and to open commerce with it, instead of depredating upon the Spanish commerce and plundering the Spanish colonies, the most prominent men in England sought to identify themselves with it, and companies were formed in London and Bristol, under the names of the Virginia Company and the New England Company, comprising among others the principal noblemen of the realm, for the purpose of promoting the scheme of American colonization. But it is to be noticed that the noblemen soon dropped out of the enterprise : America had no Eldorado for them at that time ; and when this fact was developed, as it very soon was, the enterprise ceased to interest them. The work of colonization involved toil and danger, and little immediate or even prospective emolument. The colonists themselves included none of the feudal classes in their number. The feudal classes of England were no more eager than their brethren on the Continent of Europe to earn their living by honest toil. War and plunder

and rapine had given them birth, and had sustained them in their ill-gotten power and wealth ; they were not fitted to reclaim the virgin forests of the Western World to civilization. Many of them appeared as grantees in the charters ; very few of them came to America ; and fortunately none remained. It might be well for us if none of them came now. The air of America was not congenial to the propagation of feudal institutions. The titled men who were in the enterprise were in it merely for gain ; and when it became established that there was no great gain to be had from it, they abandoned it. Those who entered into it in good faith and in earnest were those who desired to escape from the conditions by which they were environed in England ; they were exiles, voluntary or involuntary, from their native land, who sought to better their condition in a new country and a new home.

Thirteen colonies, as we know, were planted by England upon our North American shores, and all but one under charters granted by the Stuart kings. There were, in fact, upwards of twenty different charters. There were three successive grants for the Colony of Virginia, in 1606, 1609, and 1612 ; two concurrent charters for Massachusetts, in which two separate colonies, Plymouth and Massachusetts Bay, were established, which were afterwards consolidated ; and two concurrent charters for Rhode Island, where there were also two separate colonies planted, Rhode Island and Providence Plantations. For New York there were two successive charters, one issued in 1664 and the other in 1674 ; and three separate colonies, under one paramount charter,



were founded in New Jersey, one designated by that name, one by the name of West Jersey, and one by the name of South Jersey. Similarly both North and South Carolina, although settled as separate colonies, passed under one grant. New York and New Jersey had also been originally included in one grant by King Charles II. to his brother James, Duke of York; but they were soon separated by the latter. Pennsylvania and Delaware were originally one, and passed under a grant from James II. to William Penn; although Delaware received a separate colonial organization from Penn in A.D. 1701.

The charters for Virginia, Massachusetts, Rhode Island, and Providence Plantations, Connecticut, and Georgia, were granted to organized companies, such as at this day we would designate by the name of corporations; while the charters for New Hampshire, Maryland, the Carolinas, New York, New Jersey, Pennsylvania and Delaware, were granted to individuals, or to associations of two or more individuals, not incorporated. The grantees in the latter category have generally been designated as lords proprietors, and their colonial organizations as proprietary governments. In course of time, all the organized companies, finding no profit in their enterprise, surrendered to the Crown their proprietary rights under their charters, as did likewise several of the lords proprietors. These proprietary rights, at the time of their surrender, consisted mainly of the power to nominate the governors of the colonies and the members of their councils. The colonies, where the rights of the companies or the lords pro-

prietors were so surrendered, became and were thereafter called Crown colonies; and they comprised ten of the thirteen colonies existing at the time of our Declaration of Independence. Pennsylvania, Delaware and Maryland continued to be "proprietary colonies" during the whole colonial period, and their governors and councils continued to be appointed by their respective lords proprietors, while elsewhere those officers received their appointments and commissions from the King of England.

But it is a peculiar fact that, in all the thirteen colonies, however established, and whether they became Crown colonies or remained under proprietary government, the civil institutions introduced were substantially the same. These institutions were generally outlined, although no more than outlined, in the charters. The charters, reserving a general dependence of the colonies on the sovereign of England, gave to the grantees in them, whether organized companies or lords proprietors, the right to make all proper rules and regulations for the government of their respective colonies not inconsistent with the laws of England; and it was always distinctly understood, even when not expressly provided, that, subject to the proprietary rights of the companies, or of the Crown, and the lords proprietors, the colonists should have the right to select their own colonial assemblies, and therein to make their own laws and provide for such further colonial organization as they might deem necessary or proper for their condition. And it may be proper to note here that, as between the Crown colonies

and the proprietary colonies, there was no substantial difference of colonial organization or civil or social condition developed, other than the possibly somewhat unexpected difference of greater civil and religious liberty in the proprietary colonies, due, no doubt, not to the fact that these were proprietary colonies, but to the more important fact that the proprietors of Pennsylvania, Delaware and Maryland were always men of liberal and enlightened views, and had invariably sought to maintain, in the management of their colonies, the principles of civil and religious liberty upon which they had been founded.

The charters granted for the establishment of the American Colonies were, in substance, charters of incorporation of the colonists themselves, by which they were authorized to manage their own affairs in their own way, but in subordination to the sovereignty of the King of England, and in a manner not inconsistent with the laws of England—the last, however, a rather vague and meaningless provision. For each of the colonies a governor and a council were provided, to be appointed by the companies in England or by the sovereign, or by the lords proprietors, as the case might be. The duties of the governor were not substantially different from those of the Governors of our States now; or they might be more properly assimilated to those of the Governors of our organized Territories; and the duties of the Council were to advise and aid the Governor in the performance of his duties, to supply his place in the case of emergency, and to make rules and regulations for the management of the business of the colony in the absence of legislation by the colonists

themselves, or in aid of such legislation as should be enacted by them. This power of general legislation, universally conceded to the colonists themselves, was in each and all the colonies exercised by a General Assembly of Delegates chosen by them according to such arrangements as they themselves made, and usually with reference to such territorial subdivisions, such as counties, parishes, or districts, as they determined to be expedient for that and other purposes.

The scope of the legislative power, thus conceded to the colonists from the beginning, was unlimited except by two restrictions,—the one that it should not be inconsistent with the laws of England, the other that it was subject to be vetoed by the paramount authority in England, the company, the lord proprietary, or the sovereign, as the case might be, or by the governor or the governor and council as the representatives of that authority. It is a remarkable fact that these restrictions were rarely called into operation. The illustrations of the exercise of the veto power are rare and exceptional, and occurred mainly at the time when the contest between the colonies and the mother country was becoming accentuated preparatory to the Declaration of Independence. The reason for this is that the governors sent over from England were generally prudent and discreet men; that the councils were generally composed of men from among the colonists themselves, who had the interests of their colonies at heart; and that there rarely arose under the circumstances of the time any occasion for collision between the colonists and the paramount authority.



The other restriction which we have mentioned, that the colonial legislation should not be inconsistent with the laws of England, was, as we have stated, rather indefinite in its meaning, and perhaps necessarily so. And yet the construction of this restriction entered into the subsequent controversy which resulted in the American Revolution. It was probably not contemplated by any one, at the time of colonization, that it would be sought to extend subsequent legislation by the English Parliament over the American Colonies. At that time the power of the English Parliament to legislate for England itself, or to legislate at all, was, as we have already seen, in its infancy. The American colonists evidently did not contemplate any such legislation, for they proceeded at once under their charters to establish their own legislative bodies, with full power over all proper subjects of legislation. Their construction of the restriction was that they should conform to the English laws then in force which were applicable to their altered conditions, and that they should not seek to derogate from the sovereignty of the English monarch; and this construction, it must be said, they faithfully observed. It was only when, by the Revolution of 1688 and the expulsion of the Stuarts from the English throne, the power of the feudal oligarchy was substituted for that of the monarchy and became paramount, that the greatly enlarged power of the English Parliament, the organ merely of the feudal classes, was sought to be exerted upon the American colonies; and thereupon the inevitable clash occurred which resulted in our Declaration of Independence.

The establishment of a judicial system in the colonies was likewise left to the colonists themselves; and their General Assemblies determined what courts of justice should be instituted, and what their procedure should be, with general reference to the English system. The colonial system, however, differed radically in one respect from that then in force in England, and was rather in the nature of a return to Anglo-Saxon methods in vogue before the Norman conquest. Their general plan was to institute separate and independent local courts with all jurisdiction, and a central court of appeals to determine contested questions of law on appeal from the local courts. The English system, on the other hand, as we know, provided for one system of concurrent courts, having both original and appellate jurisdiction, but the members of which at times went into the country "on circuit," as it is called, to hold courts locally with juries, and for the purpose of jury trials. The colonial system has been perpetuated with us.

The appointment of the judges in our colonial system was vested in the governor, or in the governor and council, and was, we believe, invariably, for life or good behavior—a principle which even in England had not yet been fully accepted, but which soon came to be the uniform usage also of that country, although with some absurd restrictions; as, for instance, that the tenure of office of the judges should cease upon the death of the individual sovereign from whom they held their appointments.

It appears, therefore, that the governmental or-

ganization of our American Colonies was substantially the same under their charters which we see to-day prevailing in all the great English Colonies, such as Canada, Australia, and Cape Colony, and which, under the severe lesson taught to England by our Revolution, but which she has learned well, allow to the Colonies the largest possible measure of local freedom, with a dependence on the parent country scarcely more than nominal, and evidenced mainly by the appointment from England of the colonial governors. Our colonial system, indeed, was not very unlike our present Territorial organization for the so-called Territories of our Union preparatory to their admission as States. In these Territories, which, as you are aware, are organized under an Act of Congress, which constitutes their Charter, our Federal Government, through the President and the Senate of the United States, supplies temporarily a governor and a judiciary, while the inhabitants of the Territories legislate for themselves by means of a legislative assembly of their own choice, with the restriction that their legislation must not be inconsistent with the laws of the Federal Union, and that it may be nullified by the Congress of the Union. And just as the ultimate purpose of Territorial organization is the admission in due time of the Territories into the Union as independent sovereign States, so the ultimate and inevitable effect of the Colonial organization, although that effect was not even dreamed of by any of the participators in the organization down to the latest days of its existence, was entirely similar, the development of independent nationality. The ultimate

separation of the American colonies from the mother country was a necessary result from the beginning: the arrogation of power to itself by the English Parliament which was denied by the Colonies was only the occasion, not the cause, of the separation. All the Colonies of England will pursue the same course whenever a similar occasion arises for it—hereafter, however, probably without opposition by England, or even serious objection.

From the foregoing brief and necessarily superficial analysis of the charters granted by the Stuart kings of England for the establishment of our American colonies, of the conditions and circumstances under which they were granted, and of the political organizations that were effected under them, it will be apparent even to the most casual inquirer into the truth of history that by them and through them one of the most important steps in all its annals was taken for the advancement of the cause of Civil Liberty. Through their instrumentality those Englishmen who were willing to abandon their homes and to seek new homes in the New World were enabled to shake off the fetters of Feudalism which still continued to a great extent to manacle their fellow-countrymen in England. They were enabled to establish their own legislatures, which were assemblies truly representative of the people, and not a Parliament struggling with monarchy, first for existence, and afterwards for power, nor a Parliament the corrupt representative of an unprincipled oligarchy. They had their own judiciary practically independent of the English sovereign. Only the executive authority remained a



connecting link with England, and nominally beyond the control of the people; and yet even that, by means of the Councils, was to a considerable extent subordinated to the will of the people. The people of the colonies, in other words, had practically the self-government which did not exist in England itself before the present century.

Unfortunately, however, the colonists had brought with them their passions and their prejudices, and the spirit of religious intolerance that had been aroused and had been spread over all Europe by the Lutheran Reformation. They were ardent for Civil Liberty and the cause of human freedom; but the best part and the most essential element of Civil Liberty, the freedom of the human conscience, they did not at all recognize. And it is sad to think that the sacred soil of America, set apart in the councils of Providence as the home of Liberty, liberty civil and religious, should have been polluted by the fanaticism of religious persecution and a most disgraceful intolerance. Feudalism never came here; but the gloomy and bloodthirsty spirit of Odinism unfortunately found temporary lodgment in the home of Civil Liberty.

In the very first charter granted for the Colony of Virginia, A.D. 1606, there is evidence of this shameful intolerance in a provision that none but members of the Established Church of England should be admitted into that colony; and although, when the movement for religious liberty set in, sons of Virginia were foremost in it, it must be conceded that the intolerance of the first Charter in the matter of religion was rigidly and rigorously

enforced down to the very opening days of our Revolution. There was no place in Virginia for either Catholic or Puritan, Quaker or Anabaptist, or for the adherent of any religious denomination whatever that did not admit the supremely absurd and almost blasphemous claim of supremacy of the sovereign of England in religious matters. It was once sought to effect a settlement of Puritans within the limits of the Colony; but they were summarily and violently ejected, and compelled to take refuge in the neighboring Colony of Maryland, where they were kindly received, and where they laid the foundation of the City of Annapolis. And the attempt was never renewed in Virginia.

But the Puritans themselves were no more tolerant in their own settlement of Massachusetts than were the adherents of the Church of England in Virginia. It was their claim that they sought a land where they might worship God in peace and with freedom of conscience; but the freedom which they claimed for themselves they were unwilling to extend, and they did not hesitate to persecute mercilessly those who differed from them in religious opinion. The proclamation of freedom to worship God as men pleased was coupled with the condition that they should be pleased to worship Him as the Puritans did. But the proclamation brought the truth prominently before men's minds, and the condition ultimately became obsolete.

In only three of the thirteen Colonies was there full religious freedom proclaimed and practised; in two of these three, not entirely without restrictions. Maryland stands first and alone as the pioneer of

religious liberty and freedom of conscience in the New World; and George Calvert, Lord Baltimore, the founder of the Colony, who procured the grant of it from James I., in A.D. 1632, has therefore the pre-eminent honor of being the father of true Civil Liberty in English America. He soon had worthy imitators in the Anabaptist Roger Williams, who, proscribed and expelled from Massachusetts, took refuge in Rhode Island in A.D. 1636, and set up there the standard of religious liberty for all persons, and established there civil institutions of an exceedingly democratic character for that age; and in the Quaker William Penn, who, having received a grant from the Catholic Stuart James II. for the territory now included within the limits of the State of Pennsylvania, likewise proclaimed religious liberty there, with a remarkably democratic form of government. These three illustrious men, George Calvert, Roger Williams, and William Penn—the first a Roman Catholic, the second an Anabaptist, and the third a Quaker—are justly entitled to be regarded as the founders of Civil and Religious Liberty in English America. And it may be remarked, by the way, as some indication of the influence of the Netherlands upon Civil and Religious Liberty in England, that George Calvert was of Flemish origin; and also, as some indication of the influences exerted upon England by an oppressed sister island, that Calvert's title of Baron of Baltimore was derived from a town in Ireland.

But it is sad that we should be compelled to remember, in this same connection, that when the Stuarts were expelled from England in A.D. 1688,

and the Great Revolution which English writers have been accustomed to laud as the final triumph of the cause of civil liberty in that country, but which in fact was the most infamous sham and fraud ever perpetrated in the name of Freedom, was accomplished by a cabal of scoundrels, and when probably the most profoundly unprincipled hypocrite in all history, William of Orange, became King of England, the principles of the Calverts were almost immediately subverted in Maryland; the Calverts themselves were temporarily deprived of the Province; and the adherents of the Church of England, combining with the Puritans, who had all been received into the Colony on terms of the utmost kindness and equality, seized the government of the Colony into their own hands, and, with a degree of baseness which has few parallels in history, proscribed and persecuted the religion of the founder of the Colony and of a large part of their fellow-citizens. It was the realization of the story of the viper in *Æsop's Fables*, which, saved and warmed in the genial heat, turned against its benefactor and stung him. And all this was done with the aid and active encouragement of the party in England which set itself up as the champion of Civil Liberty. A more infamous chapter there is not in the whole history of our subject. We will draw the veil over it—only with the palliation, if such it can be considered, that the age was one of intolerance in religion and of bitter religious persecution; and that the demon of unreasoning fanaticism, merely a new phase of the bloody creed of Odin, had been unchained in the violence of the Lutheran Reformation.



But the seed planted by George Calvert, Roger Williams, and William Penn, grew apace, and produced its harvest in due time; and while penal laws directed against the free exercise of religion disgraced the statute-books of most of the colonies, the spirit of toleration gradually grew and gained strength, and actual toleration existed long before formal toleration was proclaimed as the policy of our institutions.

Far removed from the blighting influence of Feudalism and the feudal classes, and remote even from the control of monarchy, a democracy in fact, if not in name, grew up in the Western World. The American Colonists, although acknowledging the nominal sovereignty of the King of England, which, however, was scarcely more than nominal, legislated for themselves, and practically managed their own affairs in their own way, without interference by the English Government. The English Governors, who were sent out to them, were generally content to be a mere connecting link between the Colonies and the mother country, and they rarely sought to meddle unduly with the affairs of the colonists.

Strange as it may appear to-day, it was the growing power of the English Parliament, which was in its infancy in the days of the Stuarts when the Colonies were established, but which by the Revolution of 1688 acquired a position that overshadowed the monarchy, that first gave concern to the Colonies, and initiated and precipitated the contest into which they were ultimately driven to maintain the rights of Civil Liberty which they had sought

to establish. It was the English Parliament, and not an English monarch, that proved to be the bitterest enemy of American Civil Liberty; and to those who have carefully followed us in our statement of existing conditions in England the explanation of the apparent anomaly is not difficult. It is to be found in the fact which we have sought to enforce, that the Parliaments of England from the accession of the Stuarts down to the beginning of the present century, with the exception, of course, of Oliver Cromwell's time, were merely the organ of Feudalism and the feudal classes, and not of the people of England, and that their antagonism to the American Colonies on this basis was entirely consistent from beginning to end. The convocations occasionally held in the days of the Tudors and the Plantagenets, which it has been sought to dignify with the name of Parliaments, had cheerfully co-operated with the tyrannical monarchs of those races in fulminating edicts to restrict personal liberty by preventing the departure of any person or persons from the realm without the royal permission. The Parliaments of the days of the Stuarts had sought to restrict and curtail the operation of the charters granted by the Stuart kings in the interest of colonization. The Parliaments, that succeeded the Revolution of 1688, sought directly to control the American Colonies by parliamentary legislation. Then the clash came.

The Colonists had their own local legislatures; these they deemed sufficient for them. They saw neither necessity nor propriety for the enactment of legislation for them by an English Parliament, rep-

resenting an oligarchic class that had no sympathy with them or with their aims or purposes. They had no quarrel with the kings of England, at least with the Stuart kings of England, with whom they had most to do. Those kings had been in fact their friends, and had aided them in their development. It was only when the stupid kings of the Hanoverian line became the mere puppets of a parliamentary government, and the executive power of the State became vested in a cabinet, the committee and the creature of Parliament, the Parliament itself being the creature of the feudal oligarchy, that the power of the Parliament became felt by the colonists, and it became necessary to define the respective rights of the parties. The power of the colonies had grown, in the meantime, as well as the power of the Parliament. The few scattered and feeble settlements along the fringe of the Atlantic coast had become strong and energetic communities; and the vague and indefinite aspirations, with which they had deliberately placed an ocean between themselves and the Old World had taken shape and form and become resolute purpose.

The colonies had all been established under somewhat similar conditions; and their charters and governmental organizations bore great similarity to each other, notwithstanding natural differences of detail. Their development, therefore, was naturally that of substantially similar civil institutions, which the greater intercourse between them, as they became more settled, tended to confirm. Especially was confirmed the general sentiment in favor of the greatest personal liberty which they had come to

seek in the New World ; and also the separate and independent existence of the three great powers of government, the legislative, the executive, and the judicial, which had been naturally developed from their charters, and which they had come to regard as the great safeguard of their Civil Liberty. In England the supreme and absolute power, which had been held by the monarch, had been seized by the Parliament ; and there was there no such sharp line of demarcation as had been traced in America by the force of circumstances between the three great branches of the government. It is plain that, under such radical difference in the theory of government, a conflict was inevitable, sooner or later, between England and America.

But America was yet weak, and England was comparatively strong. The Colonies, it is true, had grown from mere straggling settlements along the sea-coast. They had cleared and occupied all the land from the Ocean to the base of the Allegheny Mountains, and they had quite rapidly increased in population. But they were disjointed communities. While they had common aspirations and common purposes, they had no political union, and their local interests occasionally clashed with each other. The first stimulus to political union came under the pressure of extraneous circumstances, about A.D. 1745. In that year war broke out in Europe between France and England, both of which, at the time, were under governments equally weak and wicked. Their conflict extended to the colonies of the two countries on the North American Continent ; and the English Colonies for the first time



made common cause with each other, in a war against the French and Indians, in which it must be confessed by the impartial historian that the English were the unprovoked aggressors. Again, in the Seven Years' War between France and England extending from A.D. 1756 to A.D. 1763, which resulted in the expulsion of the French from North America, the Colonies of the two countries were again involved; and the English Colonies were drawn more closely together, not only by the bond of a common sympathy, but likewise by the union of their military forces and the temporary consolidation of the executive power of several of the colonies in one governor. This was the contest in which the great capacity of George Washington was first manifested; and the development of it gave to the colonists a keen appreciation of the advantages of union between themselves for defence against a common enemy.

It was scarcely anticipated, however, by the colonists in general at that time, even if by the most keen-sighted among them, that the first common enemy, against which their newly-awakened sense of a common interest would be directed, would be their so-called mother country, England. And yet such proved to be the fact; and that fact, as we have already intimated, was the inevitable result of the existing conditions after the removal of the French. The presence of the latter in America might have postponed the result indefinitely. Their expulsion made it inevitable: for that expulsion gave opportunity for the radical divergence to be manifested which had taken place between the

democratic colonists of America and the feudal classes into whose hands the government of England had fallen, and between the American and English theories of government. The result might perhaps still have been postponed by prudence on the part of England, and respect on her part for the colonial sentiment. But that prudence was wanting. The government of England at the time was not in the hands of statesmen, but of corrupt court-favorites and unprincipled adventurers.

In A.D. 1765 the English Parliament assumed to tax the American Colonies, and passed what is known in history as the Stamp Act for that purpose. The Colonists claimed that they were not represented in the English Parliament, and that there could not lawfully be any taxation without representation, a phrase which they adopted as their shibboleth during all the subsequent years of controversy upon the subject. As we now look at the matter, the phrase is meaningless and unreasonable, inasmuch as it apparently states only half the case. Had the position been that there should be no *legislation* without representation it would have been logical: for to concede that the English Parliament might legislate in other matters for the American Colonies, but that it might not tax them, is not logical. Legislation is the prerogative of sovereignty, and taxation is a necessary incident of it. This is a principle of political economy too plain to be controverted by any one at this day. But it does not follow that the Colonists were wrong. On the contrary, they expressed the true principle, but in a halting way, such perhaps as was required

by the circumstances of the times. It was by means of the purse, and through its instrumentality, as will be apparent from what we have heretofore said, that all Anglo-Saxon legislation was effected prior to the Revolution of 1688. It is a low plane upon which to place the matter of legislation, but such, beyond question, was the plane upon which it had been placed in England. All Parliaments in England prior to 1688 had been called merely to vote supplies to the sovereign. That was the sole and only purpose for which they were convoked. But, when convoked, they frequently petitioned the sovereign for a redress of grievances, such as they may have supposed to exist at the time. As the condition for the grant of the needed supplies, the sovereign occasionally granted the requested redress of grievances. And this is what constituted the supposed legislation of the English Parliament. In this sense, and under this theory of the scope of legislation, the colonists, in the phrase adopted by them, were technically correct, but with reference only to the conditions existing in England prior to 1688. The substantial fact, however, was that the American Colonists would not admit that the English Parliament had any right to legislate for them at all. Their dependence was upon the English sovereign as their chief executive, not upon the English Parliament as their legislature. The English sovereign had practically abdicated his executive functions into the hands of the Parliament, acting through the Cabinet,—a fortunate circumstance, ultimately, for English Liberty, but which virtually released the American Colonists from their

allegiance. Moreover, the American Colonies had grown; they had reached man's estate; the time had come for their emancipation from tutelage. They had fled from feudalism: that feudalism, although in a modified shape, was reaching out to recover control of them. All the circumstances indicated the last struggle of an irrepressible conflict between Civil Liberty and Feudal Slavery.

Upon the passage of the Stamp Act the colonists at once began to arm themselves. Resistance was openly threatened to the enforcement of the Act. Prudence prevailed in England for the moment, and the Act was repealed. But two years afterwards, in A.D. 1767, Parliament returned to the attack, and passed an Act levying duties on various articles of importation into the Colonies, including tea. Again there were determined evidences of resistance in the Colonies. England sent over troops. There was bloodshed in the streets of Boston. Again there was a returning sense of reason in the English Cabinet and Parliament; but it was only partial. There was a repeal of all the duties, except on the one article of tea. But it was not against the amount of the taxes so much as against the principle of taxation without representation, or rather, in fact, against any legislation for the Colonies by the English Parliament, that the colonists protested. The agitation went on. All the colonies alike now felt that their rights were involved. They resolved to make common cause against the aggression. A Congress of Delegates from all the Colonies met in Philadelphia in A.D. 1774 to formulate their grievances, and to attempt to procure re-



dress for them. This was the first successful attempt to combine the Colonies in a common and concentrated cause of action.

The remainder of the story is well known. The Congress entreated and remonstrated in vain. Open hostilities broke out in the next year, A.D. 1775, with the Battle of Lexington, and on the Fourth of July of the succeeding year (A.D. 1776) the Declaration of Independence was issued. The Thirteen United Colonies became thirteen independent sovereign States, under the name of the United States of America, bound together as one nation in the bonds of an alliance against a common enemy—not, as has sometimes been said, against an unnatural mother who had turned her arms to the oppression of her children, but against the pretensions of a feudal oligarchy which had, in the first instance, driven the colonists to emigration, and had ever been their bitter and unrelenting enemy. The American War of Independence was only the culmination of the contest which had begun in England, in A.D. 1066, with the conquest of that country by William of Normandy and the grinding despotism of the Feudal System. It was the beginning of the end of the war of the people against the feudal classes.

The cause of Civil Liberty now proceeded by no uncertain steps. In the next year (A.D. 1777) the United States adopted formal Articles of Confederation by which they endeavored to form a permanent national union, not only for the purpose of the pending War of Independence, but for all time. In A.D. 1783, after upwards of seven years of war, and

nearly twenty years of contest and agitation, they secured their independence and a position among the nations of the earth by a treaty of peace with England. Four years afterwards, in A.D. 1787, when the Articles of Confederation had been ten years in existence, and had demonstrated their insufficiency for the purpose for which they had been formulated, the present form of governmental union was adopted by the promulgation of the existing Federal Constitution, which went into effect on March 4, 1789, by its acceptance, in the meantime, by eleven of the thirteen States, the other two soon afterwards following. The Declaration of Independence, the Articles of Confederation, and the present Federal Constitution, were the three steps by which was consolidated and completed,—we presume, however, that we should not say perfected,—the work begun by George Calvert, Roger Williams and William Penn. It was the consolidation and completion of the stately edifice of Constitutional and Civil Liberty.

Of the nature and scope of the steps thus taken, and how they tended to produce the result which we have indicated, it will be proper to discourse in the following lecture.

## LECTURE VI.

## THE DEVELOPMENT OF CIVIL LIBERTY IN AMERICA.

*(Continued.)*

IN our last Lecture we mentioned the Declaration of Independence, our Articles of Confederation, and our Federal Constitution as the three successive final steps by which the development of Civil Liberty was completed in America. It is proper that we should give a reason for the statement, for a mere Declaration of Independence is of itself no evidence of progress, of true progress of any kind; nor is the establishment of a new government any such evidence. It is the principles that are formulated and the conditions that are established which constitute progress.

By the Declaration of Independence the thirteen United Colonies became thirteen independent sovereign States. But from what has been already said, it is quite apparent that there was no extraordinary or radical change in their civil or political institutions, but merely a natural and legitimate development. It was comparatively easy to develop and transform the Stuart Charters into republican Constitutions, and to crystallize in organic law the already existing triple division of power between the legislative, executive and judicial branches of government, which had already by usage become part

of the civil institutions of the Colonies. The principle of a limitation upon the ordinary agencies of government and upon the extent to which governmental organization might be applied was already found in the charters. So little, in fact, was the amount of alteration required in the transformation of our colonial into an independent republican organization, that one of the Colonies now become States (Rhode Island) retained as its Constitution until A.D. 1840 the Charter granted to Roger Williams by Charles I. in A.D. 1643, and renewed by Charles II. in 1663. Indeed, the only radical and substantial change effected by the Declaration of Independence was one of theory rather than of concrete fact, the substitution of the principle of the sovereignty of the people for the theory of the sovereignty of the King of England. The reserved power supposed by the Common Law of Feudalism to be vested in the latter, and which our American colonists acknowledged as long as they were themselves in a condition of weakness and tutelage, the Declaration of Independence solemnly proclaimed to be the inalienable inheritance of the people themselves; and that assertion was not, in the ultimate analysis of the circumstances of the time, the result of any oppression by the English King or the English Parliament, but rather the legitimate and logical result of long-existing conditions. The action of the English King and Parliament gave the occasion for the Declaration of Independence, but was not the cause of it. The child had grown to man's estate, and had become entitled to the rights of a man; but the assertion of his manhood, in the face



of the feudal slavery which still held Europe in thralldom, was an act of momentous importance in the history of Civil Liberty. It was the assertion of a fundamental principle radically antagonistic to the prevailing tenets of Feudalism.

But the States, which had so combined in the enunciation of this fundamental principle, had no other bond of union than the principle itself, the similarity of their civil institutions, and the sense of a common danger in the presence of a common enemy. They were individually weak, and even if they should succeed in maintaining their position against the pretensions of the English Government in the war then pending, it was not at all clear that their peculiar position would not afterwards lead to disastrous strifes between themselves, and render them an easy prey in the future to the aggressions of some ambitious European Power. Even England might return to the attack, as she actually did thirty years afterwards; and the fate of the States of Greece before the assault and the intrigues of Philip and Alexander of Macedon might well also prefigure the fate of the infant States engaged in the concerted action against England. It became evident to all thoughtful minds that, in order to carry on the existing war successfully, to combine the resources of the States for possible future wars, to insure tranquillity at home and security abroad, it was absolutely necessary that there should be established some central governmental organization which could wield the combined power of all the States. For this purpose the so-called Articles of Confederation between the States were almost im-

mediately formulated, and they went into effect in A.D. 1777, the year after the proclamation of Independence.

By the Articles of Confederation it was sought to vest in a Congress of Delegates from all the States, wherein each State was to have equal voice through as many Delegates as it should please to send, substantially the same powers that are now vested in the Federal Congress by our present Federal Constitution; but there was no provision for any Federal Executive authority or for any Federal Judiciary. Consequently the Articles of Confederation effected not so much a governmental organization as a league of independent States; and although they sufficed to carry the War of Independence to its crowning conclusion at Yorktown—a consummation, however, which it may be well questioned whether the Union could then have reached without the consummate genius of George Washington and the timely assistance of France—the Union practically fell to pieces after the War, and the Articles of Confederation became a dead letter. The States frequently neglected to send delegates to Congress; the sessions of Congress became irregular and infrequent; and, worse than all, there was no power in Congress to enforce its legislation. There was, as we have stated, no executive, no judiciary, no central authority worthy of the name. Bickerings between the States became frequent, and there was great danger that in their mutual misunderstandings the great results of the War of Independence would be undone. If that disaster would be avoided, it was essential to

strengthen the bond of union. How to accomplish that result, to establish a strong central government, and yet to preserve the autonomy of the States, was the difficult problem with which the statesmen of the time were called upon to grapple.

But there were true and earnest statesmen in those days. Washington, as we know, had gone into honored retirement at the end of the War; but he remained a keen and most interested spectator of passing events, and maintained a frequent correspondence with his associates of the War in regard to them. Final action towards the desired result was, curiously enough, determined by him in the course of a controversy that had arisen between the States of Maryland and Virginia in regard to their respective rights on the Potomac River and along Chesapeake Bay. Commissioners had been appointed by the two States to adjust the difficulty, the result of which was an amicable compact signed in A.D. 1785. But this was not the only or even the most important result. Washington, who was not himself one of them, had invited the Commissioners to meet at Mount Vernon; and there he so effectively directed their attention to the broader subject of the general condition of the States under the Articles of Confederation that they immediately inaugurated a movement in Maryland and Virginia, which very soon extended to all the other States, for the call of a Congress of Delegates from all the States to revise the Articles of Confederation and to form a more perfect Union.

The movement met with a ready response. Delegates were elected by all the States, and the Con-

gress met in Philadelphia in 1787. Washington was one of the Delegates from Virginia, and was elected as the presiding officer of the body. The result of its labors was the total abandonment of the Articles of Confederation and the formulation of the present Federal Constitution, the most perfect instrument, as a great English statesman has observed, that ever emanated at any one time from the hands of man.

There ensued a most heated controversy throughout the length and breadth of the land upon the question of the adoption of this Constitution. The scheme was bitterly antagonized by some, and as warmly espoused by others. Parties were aligned for and against it. The theories of Federalism and Anti-Federalism distracted the thoughts of the people for nearly two years, and did not cease even upon the adoption of the Constitution, which was the final result of the agitation. It was provided by the Constitution itself that it should go into effect upon its adoption by nine of the States. During the years 1787 and 1788 eleven of the thirteen States, by popular conventions called expressly for the purpose, some of them, however, by very narrow majorities, and in some cases not without the suspicion of questionable methods, gave in their adhesion to the new scheme of central government; and that scheme went into practical effect on the fourth of March, A.D. 1789, with George Washington as the first President of the new Union, although his actual inauguration did not occur until April 30th of that year.

Two of the States, Rhode Island and North Caro-



lina, held aloof for some time; but the former gave its assent in November of 1789, and the latter in May of 1790; and their assent put an end to a situation which, if persisted in, might have proved awkward and embarrassing.

The thirteen United States thereupon, while for most purposes retaining unimpaired their separate existence and independence as sovereign States, became for other purposes merged into a new Nation, a peculiarity of condition which requires more extended notice from us, in view of the failure of many even of our own citizens fully to appreciate it. This was the culmination of the movement for Independence, and it marks a new era in the history of Civil Liberty. It is now incumbent upon us to show specifically what was accomplished by it, and how it deserves the importance which we attribute to it; for, in our opinion, not since the proclamation of the Mosaic Law upon Mount Sinai and the establishment of the Federal Republican Commonwealth of Israel under a somewhat similar Federal Constitution was there a scheme of government instituted so wise in its provisions and so well calculated to promote the cause of Civil Liberty.

Benjamin Franklin, whose shrewd good sense was a potent factor in the formulation of the Constitution, remarked of it, as soon as it had been finally drafted and had received the signatures of the Delegates who concurred in it, that it was not probably the best that could be made, but that it was the best of which our people were then capable. And we have cited the more eulogistic comment of an eminent English statesman upon it,

pronounced after a century of experience of its practical operation. But it is not to be understood from the statement of either statesman that the principles of our Federal Constitution were a new revelation of political truth, or that the Constitution itself was an absolutely new creation, emanating from the Congress that promulgated it, like Minerva, springing full-armed and perfect from the head of Jove. The work of the framers of our Constitution was not a new creation, but a wonderfully wise elaboration of existing conditions, most wise in its perfect simplicity. It was the glory, however, of these framers of our organic law to have been the first to give formal shape and practical effect in governmental organization to the three peculiar fundamental features that characterize our scheme of Constitutional and Civil Liberty. These three features are: 1st. The limitation of the ordinary functions of government through the means of written Constitutions. 2d. Our dual system of State and Federal Government. 3d. The triple division of the ordinary functions of government between the legislative, executive and judicial departments. To the consideration of these three peculiar features of our system we may well devote our present lecture.

The limitation of the ordinary functions of government by the means of written Constitutions we have stated to be the primary principle of our political system and our chief safeguard for the preservation of Civil Liberty. And we may add that our theory in that regard has now been accepted by all the nations of the civilized world except England.

How we have elaborated and applied the theory is a matter of interesting and curious study.

It is an axiom of our Political Economy that all power is from the people. And this is not inconsistent with the doctrine of Saint Paul, that all power is from God. An aphorism that may be appropriately cited in this connection—*Vox populi, vox Dei*—"The voice of the people is the voice of God"—when rightly understood and applied, will serve to explain the apparent contrariety. And if we read the axiom to the effect that "all power is in the people from God," we will readily reconcile the maxim of Religion and the maxim of our Political Economy.

Our civilization is based upon the Ten Commandments, which are merely the specific enunciation of the principles of Natural Law. All human law has its sanction solely in the law of God; and without such divine sanction there can be no possible basis for human law. Having ineradicably impressed upon the heart of man through the law of nature in the first instance, and afterwards through the law of Revelation, the fundamental principles that were to regulate his conduct and to conserve the good order of society, by the means of which he was to work out his destiny, the Creator gave to man the liberty to elaborate the details of the great scheme according to his own devices and with reference to his surroundings, but always with due regard to the great purpose which such human methods as man might invent were intended to supplement. But precisely for the reason that such human methods were intended to supplement the Divine purpose, it

is that human law derives its sanction from God. The will of a mere numerical majority is in itself entitled to no greater weight than the arbitrary edict of a despotic and irresponsible monarch. But it is because there is a conscious sense of rectitude indelibly impressed upon the human soul, which the great multitude will not disregard, while the individual may err, that the voice of the people, when left untrammelled by passion or prejudice, is in truth the voice of God, and not, like the edict of the monarch, the result merely of the power of brute force.

We often speak of an appeal to public opinion: we really mean an appeal to the God-given public conscience. It has been truly said that virtue and intelligence are essential requisites for the preservation and perpetuation of republican institutions; and it is because, when the people have ceased to be guided by virtue and intelligence, and the dictates of conscience, their voice is no longer the voice of God.

Understanding then, in the proper sense, that all power is in the people from God, we hold truly that it is the right of the people to ordain and establish government, and to prescribe its limitations; and the limitations which they prescribe are not only limitations upon the agencies which they create, but likewise upon their own occasionally inconsiderate action. As the sovereign of England, in granting our Colonial Charters, had assumed to exercise the reserved power of the State which Feudalism and the power of brute force had wrongfully transferred from the people to the monarch, and had thereby



caused the establishment of our colonial governments and placed limitations upon them, so under our theory the people, acting in their sovereign capacity, have thought proper to organize the power of the State under written Constitutions. The Colonial Charter was in writing; and it was found to be a beneficial method for the organization and development of the Colony. The State Constitution is its legitimate counterpart, in fact merely an evolution from it; and the Federal Constitution is an enlargement and adaptation of the State Constitution. The theory of a Constitution is, that all power is in the people; that the people, by means of a Constitution, ordain their form of government, determine its scope, and establish its limitations; and that they reserve for themselves, for future disposition, if need be, all the power not vested by such Constitution in their ordinary agencies of government.

Under this theory, the Supreme power in the State may be said to be always in abeyance. For the body in which the legislative authority is vested with us can no more be said to be supreme, in the proper sense of the term, than can the executive or judicial branch of government. All these branches are only agencies that may be controlled, and whose action may even be reversed, by the summoning into action of the reserved power of the people by the way of Constitutional amendment. And every constitutional provision is either a specific grant of power to some agency subordinate to the people, or a specific limitation upon such agency or upon the people themselves. That, under this theory, all con-

stitutional ordinances must be in writing, is quite evident; and it is equally evident that constitutional government, in our sense of the term, necessarily implies a government ordained and limited by written guaranty. So it is understood, not only by our own American people, but likewise by all the nations of the civilized world, except England; for, as we will see more fully in the sequel, all the nations of the civilized world except England have now adopted some form of constitutional government under ordinances and guarantees reduced to writing, and as such accepted by all parties affected by their provisions.

This, it may be observed, is wholly antagonistic to English ideas. England has no written Constitution, and never had; and it has been a matter of occasional boast with English Statesmen, and some English writers on Political Economy, that such is the case. A written Constitution, they argue, without political conditions to support it, and public sentiment to give it vitality, can be no more than a mere dead letter; and if the public sentiment and the political conditions exist sufficient to serve the purpose of constitutional guarantees, and to control the ordinary powers of government, a written Constitution is useless and unnecessary, and possibly even more of a hindrance than of benefit in the administration of civil affairs. The argument is plausible, but wholly untenable. *Litera scripta manet*—the written word remains, while the spoken word passes away, or is forgotten or imperfectly remembered; and it would seem to be the dictate of common sense that the organic or fundamental law

of a State or Nation, whereon the whole superstructure of government rests, should be definitely, and with all possible precision, set forth in such a manner as that its text should ever be before the eyes of the people and a guide to their conduct.

The result of the English idea is that, while England at present, by the force of circumstances, enjoys a very large measure of Civil Liberty, it has no Constitutionalism whatever, in our sense of the term; and it is competent for any English Parliament, at any time, to revolutionize the whole political structure of the country, to repeal the provisions of Magna Charta and the Habeas Corpus Act, and all the other supposed guarantees of civil liberty, and to establish a dictatorship, if deemed proper or expedient by a faction in power or by a fleeting public sentiment. The English Parliament is legislatively omnipotent, and is the seat of all reserved power, although in part, at least, deriving its existence and its election from the people; and it may by a single enactment, as we have stated, sweep away all the safeguards of civil liberty. Constitutionalism would seem to imply a certain amount of stability in political institutions, not dependent exclusively on existing public sentiment, which is apt to be fleeting and variable; and if England has any such element of immutability in her institutions, strange as it may seem, it is to be found in the *vis inertiae* of the House of Lords. How little of true Constitutionalism, however, there is in that relic of a barbarous Feudalism, no intelligent person needs be told.

Our ideas of Constitutionalism are wholly antagonistic to any system of government that leaves the

fundamental law to the mercy of ordinary legislative enactment. Constitutions with us are ordained by the people in their sovereign capacity, not by legislatures, which are themselves only creatures of Constitutions and agents of the people to carry their constitutions into effect. The people, it is true, cannot with us meet in one general assembly, as did the peoples of the little Republics of ancient Greece, or as the barbarian tribes did, from whom English writers are fond of deriving our civil institutions, or as barbarians and savages now are accustomed to do. For large and extensive States, and even for populous cities, the principle of aristocracy, in the guise of the representative system, must of necessity be grafted upon democracy; and neither in the making of Constitutions, any more than in the enactment of ordinary legislation, can the people act except by delegates. A pure democracy is impossible, except, perhaps, for such States as Andorra and San Marino. Constitutions, therefore, must necessarily be formulated in a manner analogous to ordinary legislation, but usually by conventions or assemblies of delegates selected by the people specially for that purpose alone. But it has been usual, also, when constitutions have been so formulated, to submit them to the popular vote for final adoption or rejection. Thus it has been that all our American State Constitutions, and also our Federal Constitution, have been adopted. And it is one of the best attributes of constitutional government so organized that it seeks not only to restrain and limit the ordinary agencies of government against the commission of excess, but likewise to limit and guard the action of



the people themselves against the impulses of sudden passion, and to protect the just rights of minorities. If it does not always accomplish that result, it is in consequence of the imperfection incident to all human effort.

The second peculiar feature of our Constitutional System is the dual plan of State and Federal Government, a feature which I may designate as one purely of American invention, although even this was also the outgrowth, in a measure, of our special conditions. It is a feature very little understood by other nations, and not always as well understood by our own people as it should be. To the student of the history of Constitutional and Civil Liberty it is, perhaps, the most interesting characteristic of our institutions.

The Declaration of Independence, as we have stated, converted our thirteen American Colonies into thirteen sovereign and independent States. Their adoption of the Federal Constitution converted and blended them into one Nation, and yet left them separate, sovereign, and independent States. What is the meaning of this apparent paradox, so well summarized in our national motto: "*E pluribus Unum*"—"From many one?" It certainly indicates one of the most peculiar, and yet one of the simplest and most effective schemes ever yet devised by the genius of man for the preservation and perpetuation of Civil Liberty. Before it there probably never existed anything of the kind in the world, unless, perhaps, it was in the Commonwealth of Israel; for the system is very different from that of alliance or confederation which

kept together the States of Holland, the Cantons of Switzerland, or the Cities of the Hanseatic League. The system of Confederation is an obvious one, but there is no element of perpetuity in confederations. They arise from some great overshadowing emergency, but when the emergency has passed they fall to pieces. Our fathers, who framed the Declaration of Independence and our existing Federal Constitution, before they devised the latter scheme, had recourse also to the system of confederation; but it had failed them after the emergency had passed, as similar previous attempts by other peoples had failed. It was evident to the framers of our American Federal system that something new in government was to be devised in order to solve the problem of the perpetuity of republican institutions. And yet the device which they adopted was a simple one. They divided the subjects of governmental action; they segregated those that were of a general character from those that were merely local in their nature; the latter they left to the States, the former they vested in the new central government which they then established. But the matters confided to the central government they specifically enumerated, and all subjects of governmental concern not so specified they expressly declared to remain vested in the States. Thus it was sought to establish independent, and yet concurrent, spheres of action for the General Government and for the State Governments, and to prevent collision and conflict between the two.

Among the principal matters committed to the charge of the General or Central Government were

the regulation of commerce with foreign States or Nations, the regulation of commerce between the States themselves as States, the regulation of money or the medium of exchange and of weights and measures, the control and management of the postal service, the encouragement of the arts and sciences by the granting of patents and copyrights, the maintenance of land and naval forces for the general defense, the raising of money directly for the purposes of the General Government by customs duties and other methods of taxation, and the establishment of a central seat of government exclusively under Federal control for the conduct of the operations of the General Government. The matters that were left to the States included the great mass of subjects on which governmental action is usually invoked and exercised—such as the regulation of all rights of property and of all personal rights, the regulation of the domestic relations, the administration of estates, and the ordinary criminal law—everything, in fact, except those matters which concerned the general welfare of the Union. For the general purposes so indicated the people of the whole United States, as one undivided people, with practical although not entire obliteration of State lines, were constituted a distinct sovereignty and an independent nationality; for all the other purposes the States remained and continued equally sovereign, distinct and independent nationalities.

The result, therefore, was the establishment of two separate and independent but co-ordinate sovereignties, each operating within the same territory, each independent of the other in its operations,

each supreme and sovereign in its own sphere, the one supplementing the other, and both occasionally concurrent, but the concurrence, whenever it occurs, being necessarily such that the central government must be supreme whenever it assumes to act.

But this very same division of power, it will be observed, and we have already so stated, was substantially established by the Articles of Confederation, and was not new in the Federal Constitution. The absolutely new feature of the Federal Constitution was the organization of a separate and independent governmental system to carry these powers into effect. But the establishment of such an independent governmental system in such manner as to avoid as far as possible collision with the States, and at the same time to provide as far as possible safe instrumentalities for the determination of such collisions, if they should occur, was a work of the greatest delicacy and difficulty, although its very simplicity, as it now appears to us, is the best evidence of the wonderful constructive genius of the framers of the Constitution.

Before the establishment of our constitution the extension of republican institutions over a large extent of territory was a question of grave doubt. The ancient Republics of Greece were territorially very small States, only cities, in fact, with small surrounding and dependent agricultural districts. The republican States of Phœnicia were of the same character. So was Carthage, so was Rome. And even if the two last-named became the possessors of great empires, their republican institutions were extended to their possessions only to a qualified



extent. The whole territory of the Commonwealth of Israel was not much larger than our State of Maryland. The Swiss Cantons were only small agricultural communities, and the States of Holland were equally insignificant in territorial extent. But, while no one dreamed of the vast territory which within one hundred years was to be included within the limits of the United States of America, yet it was contemplated that they would reach an area of territory greater than had ever been included before under one republican government. Never before had republican institutions been attempted on so large a scale. But by means of the dual system of State and Federal Government, through the trusteeship of the Federal Government by which vast outlying territory, not included at all or only vaguely included within the limits of the original thirteen States, has been transformed into thirty-two additional Commonwealths, coequal with the original members of the Union, in consequence of which our States now number forty-five, and may soon amount to fifty, and the domain of the great central Commonwealth has been simultaneously and concurrently extended, the principles of Civil Liberty have been developed on a grander and larger scale than ever before in the history of mankind. The dual system makes possible the concentration of power and strength in the Federal Government for Federal purpose, and the diffusion of power and strength throughout the States in the interest of personal liberty and local self-government. While it makes the central government strong and powerful, it makes Cæsarism and military usurpation im-

possible, through which all Republics have fallen; because every State and every State capital would be a rallying-point for opposition to any such usurpation. The system is not without its difficulties, perhaps not without its weaknesses; but its advantages are enormous, and it is, beyond all question, the best that has ever yet been devised for the co-existent ordination of personal liberty and governmental power—in other words, for the establishment of Civil Liberty.

It has been sought by some other nations to imitate our dual system. Some of the Spanish American States have made the attempt, but unsuccessfully. Either the prerequisite elements, independent States, with similar free institutions, out of which to construct a Federal organization, have been wanting, or, if such elements have been present, the forces of disorganization and disorder, which have caused so much turmoil in those States, have proved too potent a factor against the permanent establishment of the dual system. The nearest approach to the system that has been made by any other nation is the present German Empire, and while the permanence of that Empire, under its present organization, is not by any means an assured success, it is not improbable that in some shape the Federal System will be perpetuated in that country. The elements there exist upon which the superstructure may in course of time be built. There has been agitation for the establishment of the System as a method for the reorganization of the vast Colonial Empire of England, but it is safe to say that the scheme will not be realized. It is more probable that, in

the dismemberment of that empire, which is inevitable, some of its largest provinces, such as Canada, Australia, and Cape Colony, will adopt the dual or Federal System, for which the conditions are there favorable.

There is a third peculiar and characteristic feature of our governmental system to which I would refer—the triple division of ordinary power between the legislative, the executive, and the judicial branches of government. This feature also is of distinctly American origin, although such division of power and governmental administration may be said to have existed in England and elsewhere in a rudimentary and undeveloped condition.

Montesquieu, the celebrated French writer, in his Work *L'Esprit des Loix*, published in the year 1748, twenty-eight years before the promulgation of our Declaration of Independence, and about forty years before the promulgation of our Federal Constitution, seems to have been the first writer or statesman to have distinctly laid down the doctrine of the propriety, and even necessity, of this division, which he illustrated by the practice in England. But in England the division was then, and is now, exceedingly imperfect, and the French publicist, even at the time at which he wrote, might have found a better illustration in the rule and practice which had prevailed in our American Colonies for many years, resulting from the development of our Colonial Charters. But although the division had practically prevailed in all the Colonies for many years under their Colonial organization, it seems first to have been distinctly recognized and enunciated

ated as a fundamental principle of government in the Constitution drawn up for the State of Virginia under the guiding inspiration of Thomas Jefferson immediately after the Declaration of Independence in 1776. The other States all followed in the same line, and all of them more or less distinctly incorporated this principle into their Constitutions. The framers of the Federal Constitution only followed the example of the States in this regard; but it was the same men who formulated the State Constitutions of the time and the Federal Constitution.

This was undoubtedly a new departure and a novel expedient in the history of government. There was no precedent for it among the nations of the world. In the rude councils of the old Teutonic tribes, from which it has been foolishly sought to derive our civil institutions, as among all other rude tribes, ancient and modern, all the operations of government, where there was not despotic chieftainship, were determined in general assembly. There their legislation was enacted, their resolutions for tribal action taken, and their personal controversies determined. More civilized communities have always found it necessary to separate these agencies of government to a greater or less extent; and the greater or less separation has always been an indication of the greater or less extent of the prevailing civilization and Civil Liberty. In Greece and Rome there was some such separation. In Athens especially, under the wise legislation of Solon, the distinction prevailed of a *Boule* or Council to enact laws, an Archon to execute them, and the High Court of the Areopagus to expound them



and to administer justice. Similarly and for similar purposes, Rome had its Senate, its Consuls, and its Prætors. The Barbarian conquerors of the Roman Empire and the feudal monarchies which they erected again confounded these distinct branches of government; and the fact that the contest between the people and the feudal classes in Europe, and especially between the people and the feudal monarchs, is not yet at an end, although the end appears to be in sight, is both the reason and the evidence for the absence as yet of a well-defined distinction in Europe between these different branches of government.

In England the sovereign has been reduced to a mere cipher; and there is, in fact, no such thing as an executive branch of the government, independent and distinguished from the legislative branch. The executive power in that country is vested in the Cabinet, which is only a Committee of Parliament, indeed only a Committee of the House of Commons, holding its position only at the sole pleasure of the House of Commons. In other countries of Europe, where Constitutional government now prevails, the general tendency is to reach existing English conditions. The contest between the monarchs and the people is to some extent in progress; and as long as the monarchs are permitted to reign, the inevitable result of the triumph of Constitutional principles is to vest executive authority in a Cabinet selected from the legislative body and responsible to it. Of course, France and Switzerland, as republics, approach more nearly to our own standard; and it may be added that Germany also, for radi-

cally different reasons, is disposed in this regard to approximate our theory of government, as it is to adopt our dual system of State and Federal Governments. Nowhere, however, as yet, has the separate and independent existence of the Judiciary as a co-ordinate branch of governmental organization been recognized as it has been in our country. In England there is in the matter of the courts especial evidence of the falsehood, or fiction, as it may be euphemistically called, which pervades the whole social and political organization of that country, in the fact that the courts are in theory the courts of the sovereign, deriving all their authority from him and responsible to him alone, and yet in fact deriving all their authority from Parliament and responsible only to that body, a part of which, the House of Lords, has, or until recently has had, an appellate jurisdiction over the courts.

This co-ordinate division of governmental power has produced with us very remarkable, and on the whole exceedingly beneficial results. It has secured the thorough independence, freedom of action, and stability of the executive branch, without any impairment of the paramount legislative authority of the legislature. But, most of all, it has raised the judiciary to a position of power and dignity which it has never yet enjoyed elsewhere; unless, perhaps, there be an exception for a brief period of its existence in the Areopagus of Athens. In its nature, the judiciary is the weakest of the three branches of government. It has neither the power of the purse nor that of the sword; nor has it any retainers to subserve selfish purposes. But in the power

vested in it in our country, as an independent agency of the people, to expound the law, to settle personal controversies without any suspicion of influence from either legislative or executive sources, and to determine even whether the legislative and executive branches of government may not have transcended the lawful authority vested in them by the people under the organic law, the judiciary is in possession of an authority which operates not only as a check upon hasty, inconsiderate, and unjust legislation, but likewise as a remarkable guaranty of individual freedom. For in the peculiar prerogative of our American Judiciary to declare a legislative enactment null and void, whenever in their opinion it conflicts with the fundamental law as laid down in the Constitution, and to relieve against executive action, whenever such action is unauthorized by the same fundamental law, there is found an excellent safeguard of true Civil Liberty. Oppression has as frequently been accomplished under the forms of law as by the disregard of law. Indeed, it is the favorite guise of tyranny to proceed under the forms of law; while it has never yet been heard of that the repeal of a legislative enactment has led to oppression and injustice. It has become almost an axiom in jurisprudence and in the science of government that the best legislation is that which repeals previous legislation. The world is too much governed anyhow; and the idea has become entirely too prevalent that the evils that afflict society can all be cured by legislation. So, when at the suit of a citizen who claims to be injured thereby, which is the only mode in which it

can be done, a legislative enactment is decreed to be null and void as contravening the higher law of the Constitution, or an act of the executive is held to be of no validity or binding force because unauthorized by law, the judiciary, in so decreeing, relieves the citizen from a usurpation of power, and thereby distinctly maintains and advances the cause of Civil Liberty and personal freedom.

To the earnest and thoughtful student of our Constitutional system this extraordinary prerogative of our Judiciary has commended itself as one of the wisest provisions therein inserted by its framers. The development of the prerogative, while capable of abuse, like all things human, only enhances admiration of its wisdom. It is almost impossible that it should not conduce to the preservation and perpetuation of Civil Liberty.

A subordinate, but scarcely less important feature of our system, although one not entirely original with us, is the subdivision, universal with us, of the legislative body into two chambers,—designated in our Federal or National system as the Senate and the House of Representatives, and in the States usually as the Senate and House of Delegates.

Theorists, and especially French theorists, have generally argued for the greater efficiency, simplicity and reasonableness of a single legislative chamber. But there is practical wisdom in the scheme of a second chamber. The “sober second thought,” which should characterize all legislative determination, finds its best illustration in a second chamber, in which the action, perhaps hasty and immature, of a first chamber may be revised and



corrected. Experience shows the value of such revision and correction; and the occasional inconveniences of the system cannot for a moment be permitted to weigh against its immense advantages. If desirable legislation occasionally fails through conflict or misunderstanding between the chambers, this is not an unmitigated evil. Public sentiment will in due time enforce the enactment of desirable legislation, while for undesirable legislation the existence of two co-ordinate chambers is an admirable expedient for prevention. And prevention of legislation is rarely an evil. The advantages of two chambers in the ordinary legislative body has been demonstrated too frequently to permit with us any further question of the superiority of the system.

There are traces of this double system to be found in the history both of Athens and of Rome. Students of the history of Rome especially are familiar with the fact that, although the Roman Senate, composing a single legislative chamber, was the ordinary legislative body of the Roman Republic, yet there were some matters of legislation that were required, after passing the Senate, to be approved in the Comitia or General Assembly of the people, before they became laws. And the veto power, so well known among us, which gives a qualified power of disapproval to the Chief Executive and thereby adds a third constituent element to the legislative body, we know quite well to have been derived to us from the Roman institutions. During the Feudal Ages, whenever the feudal sovereigns sought counsel or solicited pecuniary assistance for their enterprises, they called to their courts both

the feudal barons and the higher clergy of the Church; and these different orders of the State, although they sometimes sat together as one body, usually conducted their deliberations separately and constituted two separate chambers. Afterwards, when representatives of the people were summoned by the monarchs to their councils, and Three Estates, as they were designated in France, were recognized as constituting the body politic, each Estate usually met as a separate chamber. In England, at first, only the barons and the bishops were summoned by the king to his councils, and these sometimes deliberated separately and sometimes together. When, subsequently, the knights were summoned as representatives of the shires or of the people, there is evidence that, in the first instance, all three of these orders met together, but very soon resolved themselves into separate chambers, the bishops and barons coalescing in one chamber, and the knights constituting a second chamber. From the usage so instituted has been derived the present arrangement of the English Parliament, with its House of Lords composed of peers and bishops, and its House of Commons composed of duly elected representatives of the people.

But while all these circumstances may have influenced the framers of our State and Federal Constitutions in the establishment of legislative bodies with two chambers, it would be a grave mistake to assume, as some have done, that in this matter we have simply followed the example of England. The resemblance of our system in that regard to that at present in England is purely accidental; and the

differences between the two systems in other respects are radical. The Colonies already had the system of two Chambers, or at least the basis of it, from the beginning, growing out of their peculiar organization. The substantial legislative power, it is true, was vested in a single General Assembly, elected directly by the people; but there was likewise in each Colony a Council, vested with limited legislative authority, and authorized to co-operate with the Governor and the General Assembly in the general management of public affairs. Here undoubtedly was the source of our legislative system. It required no great change to convert the Council into a full co-ordinate branch of the legislature. Indeed, as we have seen, in one State, Rhode Island, no change whatever was required. And the perpetuation of the name of the Council, yet given in several of the old thirteen States to the smaller in number of the two chambers, is evidence of the origin of the arrangement. There can, therefore, be no reasonable doubt that when, upon the Declaration of Independence, the States of the Union expanded their Colonial Charters into Constitutions, as all but Rhode Island and Connecticut did, the establishment in all these Constitutions of legislative bodies, each composed of two substantially co-ordinate houses, was no more than the expansion and enlargement of a governmental organization already in existence.

When, soon afterwards, the work of framing the Federal Constitution was undertaken, it was only natural that the Delegates to the Constitutional Convention, who had participated in the formulation of

their own several State Constitutions, should seek to adopt the same system for the new government which they proposed to found. Under the Articles of Confederation, it is true, the Congress had only one chamber; but that Congress was no more than it purported to be, a Congress of Delegates from sovereign and independent States confederated for a specific purpose. The Union under those Articles was merely a Confederation, and not a Government; and the purpose was to make the New Union, within the scope of its powers, a separate and independent Government, with all its own governmental machinery for the accomplishment of its purposes. It was proposed to give it an independent executive and judicial authority, as well as to remodel its legislative organization. How to accomplish this was the most difficult problem, probably, that the Constitutional Convention was called upon to solve.

The basis for the solution was in existence; they did not have to go very far to seek it. And yet the adaptation which they made was a most ingenious and admirable piece of statesmanship. The scheme is so familiar to us now by its comparatively long operation in practice, that we can scarcely appreciate what profound statesmanship and earnest patriotism it required to elaborate the existing elements into the smooth and simple scheme which we now possess. In fact, the very simplicity of the scheme, as it appears to us, is the best evidence of the statesmanship that was required for its elaboration; for it is the simplest mechanism that requires the greatest genius for its evolution from varied ex-



isting conditions. It was resolved to combine the idea of a House of Delegates, or a House of Representatives, as they elected to call it, to be chosen by the people at large of all the States as one people, without much reference to State lines and upon the general basis of population, with a select Council, more limited in numbers, to be called the Senate, as the similar body in several of the States had already been called, in imitation of the Senate of the Roman Republic, which should represent the States as States with equal voice, which should be composed of Senators to be chosen by the legislatures of the several States, two by each State, and which should serve the purpose of the old Colonial Councils in advising the Chief Executive in the matter of the appointment of all officials and the making of treaties with foreign powers, and should at the same time be an equal participant with the House of Representatives in the enactment of ordinary legislation. By the longer term for which it was provided that the Senators should be chosen, it was sought to give to the Senate of the new organization something of the permanence of the old Colonial Councils, and thereby also to insure the policy and administration of the General Government from sudden and capricious change; while the House of Representatives, intended more closely to represent the people at large, like the Colonial House of Delegates, was to be wholly renewed at brief intervals. The scheme, as we have stated, is so familiar to us now that we can scarcely understand what wisdom was required for its conception.

It has been sometimes sought to show that our American Senate had its prototype in the English House of Lords. Only superficial observers attempt so to argue. No two bodies could well be more unlike in their origin, their composition, and their purpose. Whatever resemblance there is, if any, is purely accidental; and we fail to perceive that there is any resemblance whatever, except that the House of Representatives and the English House of Commons more nearly approximate each other in their methods, and the Senate, like the House of Lords, is more orderly, systematic, and deliberate in its course of procedure.

Such is the structure with which we have sought to crown the stately edifice of Civil Liberty. It is the work, not of Utopian theorists, but of true and wise statesmen. Our forefathers had come out of the land of feudal tyranny and bondage as bad as that of the Pharaohs; they came into the wilderness, into the virgin forests of the New World, to seek the God-given freedom of which they had been deprived by the feudal tyrants of the Old World and to renew the law of Sinai and of Calvary; and out of the conditions which they established in their new homes they and their descendants have sought to work out the grand scheme outlined upon Sinai by Jehovah for Israel, by the Crucified Nazarene upon Mount Moriah for all humanity. Our social and governmental system is the outgrowth of our colonial conditions; and our forefathers of the so-called Revolution were not revolutionists, but defenders of the social order and of human liberty against one of the last attacks of expiring Feudalism

upon the rights of man. They made no violent change; they merely resisted aggression. And when the aggression had been repelled, they reconstructed our civil institutions in the light of experience, but with a wisdom of arrangement that appeals to the admiration of the ages.

They reconstructed the edifice of Civil Liberty in the massive simplicity of the old Doric temple of the Parthenon, devoid of the semi-barbaric splendor of the Gothic feudal castle.

## LECTURE VII.

## THE REACTION OF AMERICA UPON EUROPE.

“The guns of Concord have reverberated around the world.”

So said our illustrious orator and statesman, Daniel Webster. He meant to state that the principles, enunciated in our Declaration of Independence and sought to be practically enforced in our Constitutional system of government, have now been accepted by the civilized world as the true evangel of Civil Liberty. The reverberation was much weaker in his day than it is in ours. It has gathered strength and volume as it has rolled on, until all the nations of Europe, except Russia and Turkey, which should be regarded as Asiatic rather than European, have been awakened to the sound; and even the ancient Feudal Empire of Japan on the remote confines of Asia has been startled by it from the slumber of ages to the opening of a brighter day.

The culmination of the heroic contest for Civil Liberty in America created a profound impression throughout Europe. England and France especially were moved by it. England, the baffled contestant in the struggle, was more benefited than injured by the failure; for she learned by it a lesson which has proved to her of inestimable value. But



in France was the first decisive response in Europe to the principles of the American Revolution. The soldiers of France, the associates of La Fayette and Rochambeau, the men who fought by the side of Washington at the crowning struggle at Yorktown, went back to Europe fired with all the zeal of converts to the cause which they had espoused so vigorously and successfully in the New World. The French Revolution was the first echo in Europe of our American Revolution.

But how can we regard that wild orgy of crime and carnage as the echo of our American Revolution? Can Danton, Robespierre and Marat have been the legitimate successors of George Washington, Benjamin Franklin, and Thomas Jefferson? Can the spirit of the patriot souls who bore the banner of our young Republic from Valley Forge to Yorktown be said to have animated that frenzied Parisian mob which drank, with the ghoulish glee of vampires, the blood of France's noblest sons and fairest daughters? More appropriate to that savage uprising of an infuriated nation than comparison to the orderly and beneficent movement in our own country is the description which the great Scottish Poet gives of the contest between Clan Alpine and the forces of the Earl of Mar:

“Within that dark and narrow dell,  
At once there rose so wild a yell,  
As all the fiends from Heaven that fell  
Had pealed the banner cry of hell.”

That bloody and fearful Revolution was the storm bursting in all its wrath, sweeping tower and town before it, laying the mighty forest low, and

leaving death and desolation in its train. The political atmosphere had been charged with the impure vapors of a thousand years of feudalism, absolutism, and licentiousness. The lascivious wantonness and gross frivolity of the most corrupt court in Europe, the brutal degradation of an effete aristocracy, the corruption of the clergy, the grinding taxes imposed upon the people from which the nobles and the clergy escaped, the all-pervading contamination of Voltaireanism, had so polluted the political atmosphere of France that a storm of terrific intensity seems to have been required to clear away the murky vapors and to purify the elements. And if, in the course of that terrific storm, the electric bolt struck castled crag and peasant home alike, and if blood flowed like water till the Seine and the Rhone and the Loire ran red to the sea, and if saints and heroes, as well as ruffians and demagogues, were sacrificed alike, a horrible holocaust to the Moloch of a demon Republic; and if, in addition to all this, a lurid star in the train of the storm shot across the horizon and flashed its baleful light upon the startled nations and scattered its rain of fire over Europe from the Bridge of Lodi to Moscow's towers, only to set at last in darkness behind the hills of a lone island in the Southern Ocean, this was only God's Providence to evolve from the criminal past a newer and a better day. The Almighty had found it necessary to wash out in the waters of the Deluge the crimes of the Antediluvian World. He found it necessary to wash out in blood the scarcely less enormous crimes of Bourbon France and Feudal Europe. Feudalism

and Absolutism had sunk in iniquity beyond the power of reform; their destruction was required; and that frenzied war of all the elements was permitted in the councils of Divine Providence to effect their destruction and the restoration to the people of their just heritage of Civil Liberty. The horrors of the French Revolution were the bloody revenge of the people for the outrages and oppressions of Feudalism, and for the butcheries of the brutal savages who had established that infamous system on the ruins of the Roman Civilization.

The French Revolution was a terrible necessity. When the gangrene of political corruption has so far eaten into the vitals of the body politic as to be beyond the reach of ordinary treatment for reform, amputation, and the knife, and the most heroic remedies are required to be used. Violence begets violence; excess necessarily leads to excess. Force and fraud and violence are the progenitors of a bloody revenge. To the careful reader of the history of Europe antecedent to the French Revolution the wonder is, not that the Revolution occurred with the intensity which characterized it, but that it did not come earlier and with greater violence. I am not seeking to offer any palliation for the awful atrocities of that outbreak, but to account for them. For those atrocities the blind votaries of Feudalism and Feudal Monarchy are more responsible than their maddened victims, the heirs of centuries of oppression and wrong.

The French Revolutionists proclaimed a Republic, and their motto was: "Liberty, Equality, and Fraternity." But Liberty they sought to enforce

by a reign of terror, Equality by bringing to the scaffold all that was good and great in France, and Fraternity by deluging the land with civil strife and bloodshed. Their Republic was a demoniac caricature of Republicanism. The model which they set up for themselves was not that which Jehovah had ordained for Israel, but its pagan imitation in Athens and Rome; and they sought wholly to eliminate from their institutions all that had ever given vitality to republicanism, the doctrines proclaimed upon Sinai and the Mount of Olives, the doctrine of the Fatherhood of God and of the Brotherhood of Man. They proscribed Christianity, and would have eradicated religion. This was the frenzy of madness, not the rational assertion of human right. And yet the result was that the storm did purify the atmosphere, notwithstanding the savage desolation which it wrought; that not otherwise, in all human probability, could the abuses of feudal insolence and monarchical tyranny have been obliterated; that it thereafter became possible to reduce to practice the theory of "Liberty, Equality, and Fraternity;" and that humanity now breathes more freely in the sunlight of a better day.

For twenty-five years the storm raged; and all Europe felt its force. It swept over all the nations. Through all the nations the adherents of the old social system of oppression and wrong, supposed by them to have been consecrated by thirteen centuries of existence, gathered themselves together to resist the new-born spirit of freedom. France had thrown down the gage of battle to all the nations. Mon-



archy and aristocracy, in self-defence and in defence of what was assumed to be the cause of good order, took it up. The fierce democracy, which had ruthlessly demolished the feudal castles of France and brought to the block the head of the last of the long line of Hugh Capet, threatened a similar fate to all the monarchs of Europe and to the political and social system which had grown up around them. From Moscow to Cadiz, from the Baltic to the Adriatic, the storm swept, turned and returned, tore the social system to tatters, blotted out all the ancient landmarks of the European political system; and the work of destruction was almost complete when it spent itself at last on the plains of Waterloo.

We ourselves were twice for a time on the edge of that storm. The insolence of France on one occasion almost brought us to the verge of hostilities with her, and so far that it was deemed expedient to call the patriot sage of Mount Vernon from his honored retreat, and to entrust to him again the sword which he had so nobly surrendered at the end of our War of Independence. And again, some years later, the arrogant pretensions of England, then engaged in her gigantic struggle with Napoleon Bonaparte, actually compelled us to engage in the three years' war which we waged against her from 1812 to 1815, which at last taught the Island Kingdom the lesson which it had found so difficult to learn, but which it then began to learn well, the hopelessness of a successful contest against the just rights of American Freedom.

A great calm followed the storm, as generally

happens. The contestants were all exhausted. The French Democracy had been overthrown; its enemies had triumphed; Absolutism seemed to be supreme; but Feudalism had perished in the conflict, and it was impossible again to revive it. The contest was not at an end; it was now to go on by more peaceful means; the arena had merely been cleared of obstruction to allow freer scope for its prosecution.

Upon the overthrow of Napoleon Bonaparte, the sovereigns of Europe and their prime ministers met in what is known as the Congress of Vienna to reorganize the European social and political system. It was found utterly impossible to reorganize that system entirely on the old lines; the great storm had swept away too much of the material of which it had been constructed. It was impossible again wholly to enchain the free spirit that had been let loose from its prison. Public opinion had become a power in Europe. The flagrant and notorious disregard of decency that had characterized all the courts of Europe in the preceding century was no longer possible. The absolutism of preceding ages was no longer possible. The nations that banded against Napoleon Bonaparte had learned that the Revolution, of which he was the child, was not wholly without justification, and they had imbibed some of its principles. The hand on the dial of time might be temporarily arrested; it would not be turned backwards. The Congress of Vienna would perhaps have turned it backwards, if it had the power; but the rulers of the nations had learned something in the course of the contest, and they did

not dare to restore the political conditions that antedated the French Revolution. Their policy indeed was reactionary enough for the time ; but in a little more than a quarter of a century all the work of the Congress of Vienna was undone.

The representatives of France and England in that Congress had counselled moderation ; and it is mainly due to their efforts that the participants in the Congress failed to push the reactionary movement to the extreme limit which they desired. Indeed, some of them speedily regretted that they had not so pushed it ; and three years afterwards they held another and more select Congress at Laibach, in Austria. The participants in this Congress were only the Emperor of Russia, the Emperor of Austria, the King of Prussia, and their several prime ministers. They formed there what they called the Holy Alliance, a coalition which we would probably prefer to characterize by a different epithet, the purpose of which was to prevent the establishment of constitutional government in Europe, to repress the growing spirit of freedom, and to perpetuate the system of absolute monarchy upon the basis which then prevailed in the three nations which have been mentioned.

There had been a reaction in England against the Tory spirit which had so bitterly antagonized Napoleon. The liberal party in that country had always been disposed to regard the antagonism to Napoleon as a political mistake. The liberal spirit had been dissatisfied with the result of the Congress of Vienna ; it was outraged by the resolution taken by the Congress of Laibach. Under the influence of

England, France and Spain had adopted constitutional government of a more or less liberal character; and there was a movement in Naples in the same direction. The Bourbons, who had been restored to the government of those three countries, had learned something by their bitter experience, although not very much. But the establishment of Constitutionalism in any shape or to any extent was not grateful to the Holy Alliance. Austria was commissioned to suppress the constitutional government in Naples; and Louis XVIII. of France was instructed to draw more tightly the reins of absolutism in his own country, and to send an army into Spain to overthrow the constitutional system in that country. Both commissions were effectively executed. It was not yet thought safe to overthrow entirely the constitutional system in France itself; and that was permitted to continue, but under such restriction as made it exceedingly unsatisfactory.

But the Holy Alliance was not satisfied with its work in the Old World. In an evil moment for it, it turned its attention to our Western World; and for the first time the influence of our American Union, which hitherto had only been quietly exercised by the object-lesson which it presented to the nations of the earth, became formulated in such action as thereafter to revolutionize the political history of the world.

A word of explanation will be proper to show the conditions which now brought our country into such prominence in the affairs of the world.

Spanish America had broken away from Spanish



rule. This included all the region from the Colorado River to Cape Horn—that is Mexico, Central America, and all South America, except Brazil, which had become an independent empire under a scion of the royal house of Portugal, to which it had previously belonged. The banner of revolt had first been raised in the land of the Montezumas in 1810 by an humble Mexican priest, Miguel Hidalgo; and it was speedily followed by outbreaks in Venezuela, Buenos Ayres, and elsewhere in South America. With various vicissitudes of fortune, the revolted colonies succeeded in maintaining their independence against the arms of Spain; and they all set up republican forms of government, modeled upon our own constitutional system, which was imitated by several of them almost to its minutest details. Unfortunately this republican movement in Spanish America was not always the spontaneous will of the people, nor was it always guided or controlled by a sincere spirit of patriotism. It was too often controlled by the machinations of secret oath-bound organizations, to whose schemes and selfish intrigues are due most of the intestine convulsions that have since rent these Spanish-American communities. Their republicanism has too often been a scarcely disguised dictatorship. But at all events their pretense was the establishment of free institutions and constitutional government.

When Louis XVIII. of France was commissioned to restore Absolutism in Spain, the commission included an avowed purpose on the part of the Holy Alliance to restore Spain's revolted American

Colonies to their allegiance to her, and it was understood that a determined effort was to be made to crush out the spirit of Freedom in the New World. There was enough in the conduct of the secret organizations to which we have referred to give colorable excuse to the Holy Alliance in the interest of peace and good order for its interference, and there was no pretense of any purpose to interfere with our own country or with our own civil institutions. It was not apparent, indeed, that any interference was possible, inasmuch as England had by this time fully acquiesced in our independence, and sought no restoration of her rule over us; and even if she had sought it, the Holy Alliance was not disposed to regard her constitutional system much more kindly than our republican institutions, and had no motive, therefore, to aid her in the recovery of her former possessions in North America. England, at the time, whether through sympathy with the movement for liberty in Spanish America or for more selfish reasons, as has been frequently asserted, and there seems to be good reason to believe, was antagonistic to the purposes of the Holy Alliance with regard to the Spanish American States, and the schemes of the Absolutists, therefore—at all events for the time being—ignored both England and the United States. But both England and the United States deemed their interests to be involved, although only the latter moved openly in the matter.

In the year 1822 the Liberal party had acquired power in England, and George Canning had become Secretary of State for Foreign Affairs. After-

wards he became Prime Minister. England has had many statesmen who made more reputation in the world, never an abler or more just one. Under the lead of his predecessor, the infamous Castlereagh, England had been, if not a subservient tool, at least a passive spectator of the schemes of the Holy Alliance. Canning broke away from that policy of subserviency, and caused his country to embark upon a course of liberalism unknown to previous statesmen. The period of his ministry (A.D. 1822-27) was the true era of English Constitutional and Civil Liberty. He was the first of English statesmen to acquiesce heartily and unreservedly in the independence of the United States, and to seek to find in us an ally, rather than an enemy. He paved the way for the removal of the religious disqualifications which, up to his time, had made England's claims to Civil Liberty a hideous mockery, and he appropriately closed his career by procuring the freedom of Greece from Turkish misgovernment and Mohammedan brutality, in opposition to the wishes of the old hide-bound Tory aristocracy. He was a man of the people, and not a scion of old nobility, and his administration was the beginning of a new era in English politics. He was clear-sighted enough to see that the schemes of the Holy Alliance were an anachronism in the nineteenth century, and that they would probably lead, if unchecked, to a bloodier revulsion than the French Revolution. Whether through principle or through policy, he resolved to thwart those schemes, and he turned to America to aid him in his purpose.

James Monroe was then President of the United States. To our minister to England at the time, Richard Rush, Canning intimated the purposes of the European sovereigns, the ultimate danger to our own institutions if they should persist in them, and the disposition of England to co-operate with us to check their plans. The intimation was promptly communicated by Rush to our Government, and President Monroe as promptly took occasion to make the statement of our American policy, that we would view with disfavor and alarm any attempt of the Holy Alliance to extend their system to our Western Continent. This was the declaration of American policy which has become so famous as the Monroe Doctrine. It was a mere declaration of policy, but it sufficed to check the schemes of the Holy Alliance, to secure the independence of Spanish America, to thwart the purposes of the Holy Alliance to a considerable extent even in Europe, and to encourage the friends of Freedom everywhere throughout the world. It was an explicit declaration that the purposes for which America would seem to have been reserved in the councils of Divine Providence should not be interfered with by Slavonian despotism or Teutonic Feudalism. And when it was said to the despots of Europe, "*Thus far shall ye go, and no farther,*" their prestige was at an end, their power was broken. The scales fell from the eyes of their own people. Both monarchs and people fully saw that a young giant had arisen in the West, with whom they would hereafter have to count in any movement involving the question of human right



and civil liberty. Thereafter the reaction against Absolutism in government went on steadily in Europe, and England became, and generally remained, the leader in the movement.

Absolutism, as we have seen, had become dominant in Europe after Waterloo, almost as a necessary consequence of the exhaustion consequent upon the overthrow of the military power of France. It was, it is true, a great mitigation of the Feudal System of preceding ages, but still it was Absolutism, wholly unsuited to the great enlightenment which had resulted from the commotion of the French Revolution. The reaction against it necessarily came; it came sooner even than had been expected or anticipated.

England had participated largely in the overthrow of French ideas. English Feudalism had ever been the bitter foe of Freedom. And yet England, among the first of the European nations, tacitly accepted the theories which she had contested and combated. A curious divergence had separated her from the other European nations in previous centuries. The shock of French Revolutionary ideas, the decapitation of one monarch, the dethronement of another, the proclamation of the rights of the people as against the arbitrary rule of monarchy, had all been anticipated in England upwards of a century and a half before the great French outbreak. That movement, it is true, had spent itself in its own excesses and in its own violence. But, as the result of the expulsion of the last of the Stuarts, the English Aristocracy had wholly subordinated the monarchy to itself, while on the

continent of Europe, on the contrary, the circumstances had all tended to subordinate the aristocracy to the monarchy, and to render the latter absolute. These were merely concurrent developments of Feudalism, in which the people, as such, had no voice. But Aristocracy is nearer to the people than Monarchy, and must necessarily deal in popular methods. Necessarily, therefore, although it is itself the enemy of Freedom as much as monarchy is, its development, in course of time, must lead to the development of popular right. This is precisely what happened in England. But to George Canning, more than to any other English statesman, is due the credit of having finally and definitely caused England to embark in the cause of Civil Liberty at home and abroad.

Canning died in 1827, in the zenith of his power and usefulness, and upon his death the pendulum temporarily swung backwards. The adherents of the Holy Alliance, availing themselves of the great name and rather mediocre civil talents of the victor of Waterloo, were entrusted with the reins of government. But in the same year, A.D. 1827, there appeared upon the scene of English politics the greatest popular leader the world has ever known since the days of Pericles, and to whom, more than to any other one man of the century, England and the world are indebted for the modern development of Civil Liberty in Europe, the illustrious Irishman, Daniel O'Connell, whose agitation in behalf of Civil Liberty is without parallel in the annals of the world. He took up the cause where George Canning had left it, and for twenty years he stood forth before

Europe and the world the leader of a movement without immediate result for its immediate purpose, the liberation of his own unhappy country from the hated yoke of England, but of incalculable benefit to the cause of Freedom elsewhere throughout the world. For the twenty years over which his agitation extended, an agitation most extraordinary in being entirely peaceable and proposing only peaceful means to accomplish its purposes, no name was more widely or better known, either in Europe or America, than that of the so-called Irish Liberator, Daniel O'Connell.

A Roman Catholic in religion, and as such disqualified by existing law from admission to the English Parliament, of which none but members of the English Church, by law established, were then permitted to become members, he was elected to that Parliament in defiance of the statute, and he knocked at the gates of Westminster Hall for admission, but was refused. His daring act, however, led to the political emancipation in the same year (A.D. 1828) of the various dissenting Protestant denominations, so that in England, in the broad daylight of the nineteenth century, the followers of John Calvin, John Knox, William Penn and John Wesley owed their civil and religious freedom and their restoration of the right of citizenship to the agitation inaugurated by the Irish Roman Catholic O'Connell.

The seat for which O'Connell had been elected was declared vacant by Parliament on the ground that there had been no election. But the undaunted agitator stood for election a second time in contra-

vention of the statute, and a second time he was elected by a greatly increased vote of his fellow-citizens. Again in still louder tones he thundered at the gates of Parliament for admission, and again he was refused. But the result was that an unwilling Cabinet and a reluctant Parliament found themselves compelled by an aroused public sentiment to enact the Catholic Emancipation Act (A.D. 1829) for the removal of the civil and religious disqualifications of the Roman Catholics of Great Britain and Ireland, the legitimate sequel of the Act of the previous year for the political enfranchisement of the Protestant Dissenters of the United Kingdom. Again, for the third time, O'Connell stood for election to Parliament, and he was returned by an overwhelming vote of the electors. The struggle was at an end, the disqualification had now been removed, and the triumphant Irish Agitator entered the House of Commons to begin there a new course of agitation, as well as to continue in Ireland that which he had already commenced for the repeal of the Union of that country with England.

An enlightened public opinion was gaining ground in England, and one of the earliest results of the great Irishman's continued agitation was to open the eyes of liberal-minded Englishmen to the rottenness of their existing system of Parliamentary Government. Under the Stuart Kings, and with their consent, England had secured regular Parliaments, bodies that were called to legislate, as well as to vote the supplies. Before this time no Parliament, except that of Simon de Montfort, in 1265,



had ever been called in England for the purpose of legislation. For that the Stuarts consented to the innovation, we should give them the credit which is due to them. It was the feeble beginning of English Civil Liberty. But the Revolution of 1688, instead of enlarging the rights of the people, as is commonly supposed, greatly, although perhaps covertly, abridged them by placing the Parliaments wholly under the domination of an oligarchy. This was done by means of the system of rotten boroughs, a name which seems to have been first applied by O'Connell to the electorate which selected the members of the House of Commons.

The English electoral districts were then, and to a certain extent yet remain, wholly arbitrary. They were not based upon any ratio of population, or upon any other rational basis whatever. Possibly, for the purpose of taxation, for which only such districts in the beginning seem to have been recognized, there may have been some reasonable basis for the assignment of representation in the House of Commons. But, if any such reason ever existed, it had long ceased to have any force. London, of course, and the other large cities of the Country, were entitled to some representation, but even their membership in the House of Commons was entirely arbitrary. The great majority of the electoral districts were boroughs or hamlets that had ceased to have any population, or any greater population than a few tenants or retainers of the powerful nobles within whose domains they were situated, and who controlled absolutely the selection of their representatives in the House of Commons. The English

Aristocracy not only had one branch of the Parliament, the House of Lords, exclusively to themselves—for in this connection we can take no note of their associates and subservient tools, the bishops of the English Church who sat with them, and who, as is usual in such cases, were worse than their masters in political profligacy—but they likewise completely owned the House of Commons by their ownership of the “rotten boroughs,” for which they directed the sheriffs to return their creatures. A more monstrous fraud upon representative government and Civil Liberty was never devised than the English House of Commons from 1688 to 1832. So far as there was any genuine Parliament in England during that period, it was to be found solely and exclusively in the House of Lords. There were occasionally able men in the House of Commons, especially during the latter part of the period, but no intelligent man, familiar with the subject, can assert truthfully that the House of Commons of the Hanoverian period was a representative body of the English people, freely chosen by the English people to legislate for them and to conduct their political affairs as their agents.

But consequent upon the Napoleonic Wars intelligence had grown. A public opinion had been developed. The spirit of America had had time to react upon England. It had become apparent that all French theory was not wrong. Many Englishmen had come to the belief that their bitter antagonism to Napoleon had been a mistake. O’Connell’s agitation, in principle, affected the just rights of Englishmen as well as those of Irishmen. Renewed

movements abroad for an increased civil liberty, to which we will have occasion further on to advert, met with a responsive sympathy in England. Everything conspired to awaken a more true and just spirit in that country. At last, in A.D. 1832, after a sharp and sufficiently bitter contest, there was enacted into law by the English Parliament a measure known as the Reform Bill, by which that body accomplished the exceedingly rare and difficult work of self-reformation and the regeneration of England. That enactment provided for the abolition of the "rotten boroughs," and for the selection of Parliaments reasonably representative of the English people, although various subsequent enlargements of the suffrage have been required in order to make the English House of Commons what it now is, a really popular body which has practically eliminated the House of Lords from the control of English politics. By the Reform Bill the substance of Civil Liberty has been secured, when before that there was only a phantasm masquerading in the guise of liberty. It did for England what our Declaration of Independence and our Federal Constitution did for America.

We have had occasion repeatedly to repudiate the insolent pretensions of English writers to the possession by their country of free institutions and of Civil Liberty from time immemorial. That time dates from A.D. 1832. That there were some elements of freedom before that, no one will deny, but the passage of the Reform Bill was undoubtedly the true era of English Civil Liberty. England has passed through many varied phases in her career.

She deserves all the censure and a very large part of the eulogy that has been passed upon her. She has been a pirate among the nations, profiting alike by petty stealing and highway robbery—alternately a bully and a hypocrite, arrogant to the weak and cringing to the powerful; bearing a Bible in one hand and smuggling opium with the other; corrupting the savage with fire-water and bribing the barbarian with presents to lead a nobler life. She has civilized and colonized where other nations have failed, but the weaker races she has exterminated before her. Her administration of her vast empire has generally been for profit; but her rule, both at home and abroad, since 1832, has generally been just, with some notable exceptions, and her influence has generally been on the side of humanity and Civil Liberty. What Pope Gregory is reported to have said of the possibilities of the English, when he saw some Anglo-Saxon youths in the market-place at Rome before he sent Augustine to convert the nation, an anecdote to which we have already referred, would seem to be as appropriate now as it was then—“*Non Angli, sed Angeli, si modo Christiani*”—“Not Angles but Angels, if only Christians.”

There are many things in England yet that need elimination from the social system. The piratical spirit of the Norman buccaneer and the land-grabbing instinct of the Anglo-Norman feudalism still break out, whenever occasion arises, in the English adventurer; and the English government in the hands of tricksters, like Viscount Palmerston and Benjamin Disraeli, occasionally reverts to the lines



upon which Elizabeth's government of bandits was constructed. But, in general, that government since the year 1832 has been conducted on a far higher plane of public morality than has ever before characterized it since the days of Edward the Confessor. During this period it has served in great measure as the model of all Europe for constitutional government.

Simultaneously with the inauguration of O'Connell's great struggle for civil and religious liberty, popular discontent was growing in Europe for broken monarchical promises and the encroachments of the Holy Alliance upon what there was of constitutional government. Only fifteen years after Waterloo, in A.D. 1830, France a second time asserted her undying opposition to arbitrary power, drove out the elder branch of the House of Bourbon, and supplanted it with the House of Orleans and a more substantial system of Constitutionalism. Far within the heart of the realms dominated by the Holy Alliance and the principles of Absolutism, Poland, in the same year, rose in rebellion against the iron rule of the Russian Czar; and its gallant, though unsuccessful, stand against overwhelming numbers won for it the sympathy of the civilized world, and especially the sympathy of the party of liberalism in England. Responsive to the movement in France, the Belgians rose about the same time against the rule of the family of Orange and the ill-contrived union between them and Holland. Similar movements in the direction of liberalism took place in Spain and Portugal. And in all these movements, except that of Poland, which was too

remote from her sphere of operation, the influence of England was always quietly but effectively cast in favor of liberalism and constitutional government.

But the political conditions remained unsatisfactory in many of the European Countries. The House of Orleans failed to give satisfaction in France. The sovereigns of Germany, great and small, failed to inaugurate the Constitutional guarantees, with the assurance of which they had deluded their people to resist the French aggressions in the earlier part of the century. Russia, Austria, and Prussia, which constituted the Holy Alliance, remained thoroughly despotic and absolute monarchies. Austria dominated Italy, and Russia dominated Austria. The gigantic Absolutism of the great Slavonian Empire, in fact, dominated the whole continent of Europe; and were it not for the counteracting influence of England and the dread of releasing the fierce democracy of France from its self-imposed restraints, it would not have hesitated, in accordance with the resolutions of the Congress of Laibach, to use force in order to blot out constitutionalism from the Continent. In England itself the political situation was far from satisfactory. There were demands for more extensive and radical reforms than had been effected by the Reform Act of 1832, and for a written constitution on our American plan; and England's treatment of Ireland, although greatly more liberal than in the preceding centuries, still continued to be a just ground for discontent of the Irish people.

Suddenly and almost without warning, as if by

preconcerted movement, insurrections broke out in the year 1848, long to be remembered as the Year of Revolutions, in all the principal European Capitals,—in Paris, Berlin, Warsaw, Vienna, Budapesth, Rome, and Naples; and likewise in Ireland—although the Irish insurrection seems to have had no direct connection with the others. The Republic was again proclaimed in France, where it was maintained for three years; and revolutionary governments, claiming to be of a republican character, were set up in the other capitals mentioned. The kings fled for a time, and some resigned; but monarchism soon reasserted itself. The King of Prussia recovered his capital. The armies of Russia were speedily set in motion to crush the uprising in Hungary and in Austria, which they accomplished after a gallant but ineffectual resistance by the Hungarians. Rome surrendered to a French force sent against it. The insurrections, except that of France, finally failed, and their leaders fled to Switzerland, England, and America. But it is a mistake, probably, to say that they all failed. Some of them had been without sufficient cause or justification; but for most of them there was a ground of genuine grievance. The monarchists of Europe, although triumphant for the time, realized the precariousness of their tenure of power; and the long-promised and the long-withheld reforms were finally granted. Within a quarter of a century after the Year of Revolutions Constitutions were promulgated and constitutional systems of government, more or less liberal in their character, were established in all the nations of Europe, except Russia

and Turkey, both of which are still ruled upon the Oriental autocratic principle, and one at least of which, it may be confidently asserted, is utterly incapable of any other kind of rule, as long as it is permitted by its existence to disgrace the civilization of Europe.

With the exception of the two nations specified, constitutional systems of government, based upon written constitutions in accordance with our American idea, but otherwise in general operating in accordance with the English Parliamentary theory, have now been in force in all the nations of Europe for upwards of a quarter of a century, in some of the countries for a much longer time; and notwithstanding many and serious drawbacks in their operation, they have, on the whole, given cause for satisfaction to the friends of Civil Liberty, not so much, perhaps, for what they have actually accomplished as for the promise which they give of better results in the future. At all events, Feudalism, with all its infamies, is now dead; and Absolutism has become a synonym for barbarism. Civil Liberty has become the rule of the civilized world; and arbitrary power is only the exception. The voice of the people may now be heard everywhere; and if it is not always heard to its fullest extent, and if the systems that have been set up are not always truly representative of the people, and if the partisans of privilege and prerogative are still engaged in battling against human right, it is at least certain that the revolution now will never go backwards, and that all the nations have the basis on which to move forward to the full realization of the



original scheme of Divine Providence for the government of the human race.

But have the results fully justified the sanguine expectations of the friends of humanity? Has Freedom's battle finally been won? The long contest has left many a scar on the body politic; and it would be very strange if, after fifteen hundred years of feudal barbarism and monarchy, the enfranchised peoples should always be able at once to use their newly-recovered freedom with the most consummate wisdom. Moreover, while the cause of liberty has triumphed, it is only in the recognition of the principle: there is much yet to be eliminated from the social and political system of the antecedent abuses. The monarchical and aristocratic elements in Europe have forced the democracy to a temporary and unnatural compromise. The English theory of a sovereign who reigns but does not rule is in principle a most indefensible absurdity, which, in the nature of things, cannot be perpetuated, however good an expedient it may prove wherewith to bridge an intervening chasm. We are disposed to think that only by the adoption substantially of our American system in its entirety can the long contest ultimately and satisfactorily be settled, and that the logical and inevitable tendency of existing conditions is towards the realization of that result.

A word of explanation will be proper in regard to the salient features of the constitutional systems of government now in force in the principal European nations. And from what we have to say in this regard we must except not only Russia and

Turkey, which, as we have stated, yet remain Oriental despotisms, but likewise republican Switzerland, with its thoroughly democratic institutions of comparatively ancient date, and France, now also republican and with political institutions substantially not unlike our own; as also such petty republican States as Andorra and San Marino. Our present consideration is mainly of such nations of Europe, outside of the United Kingdom of Great Britain and Ireland, as have sought to combine monarchy of the hereditary character with constitutionalism and popular government. These comprise Germany, Austria-Hungary, Italy, Spain, Portugal, Belgium, Holland, Sweden and Norway, Denmark, Roumania, Bulgaria, Servia and Greece. In all these countries, while the American idea of written constitutions, defining and limiting the functions of government, has been adopted,—and it could not well have been otherwise,—they have all been compelled to adopt, also, the English Parliamentary system of government by a Cabinet responsible to the legislature. That legislature is usually composed of a House of Commons or a House of Deputies, similar to the English House of Commons or our House of Representatives, and elected by the people, and of another more limited and select body, being in some measure a compromise between our American Senate and the English House of Lords. Nowhere, however, is there the hereditary feature appertaining to the last-named body. Life-tenure is the extreme limit in any case; and there is no monopoly of its membership by the aristocratic or privileged classes. Everywhere the sovereign has a veto upon

legislation, and is therefore a constituent element of the legislative body; and this veto is, as in the English system, theoretically unqualified and absolute, not qualified, as with us, and subject to be overridden by some two-thirds or three-fourths majority in opposition to it. But it is considered, also, that the English practice, as well as the English theory, obtains,—that this reserved veto power is to be exercised only under the risk of revolution, and of treason on the part of the members of the Cabinet who sanction its exercise. The sovereign is nominally the sole and exclusive head of the executive branch of the government; but this is only in theory. The executive power, in fact, is reposed in the Cabinet, which is responsible to the legislature and holds its position only so long as it receives the legislative approval, and of which the members are required to be members of one or other or both of the branches of the legislative body. This is, in substance, the English Parliamentary system; and it is the system now in force, with more or less variation, in all the nations of Europe which have been mentioned. In Germany, it may be remarked, there is a greater approximation to our own system, although for reasons different from those which dictated our arrangement. There the monarch retains more of the ancient absolutism and independence, and has more control over his cabinet, than have the monarchs in other nations. But it is believed that this remnant of the old feudal power must soon be relegated to the desuetude which characterizes the other attributes of former monarchy. In none of the European nations yet has the triple division of power

been established between the legislative, executive, and judicial branches of government, which we regard as one of the three great fundamental features of our American constitutional system, and which seems to us one of the best safeguards for the perpetuation of Civil Liberty. This feature, of course, is impossible in Europe, and even in England, as long as the hereditary idea of the monarchy is permitted to exist, and to be given effect.

Thus far we have referred only to the development of constitutional and civil liberty in Europe and America. We deem it needless to mention the great colonies of England in South Africa and Australia, in both of which, under the suzerainty of England—for the connection does not amount to much beyond that—there is a remarkable development of civil and political institutions on English lines, or rather on lines partly English and partly analogous to our American system. In the same category is our near neighbor, Canada. But there is one other nation that should be mentioned in this connection for its extraordinary development of constitutional government—the most unprecedented, probably, in all the annals of history: for it is the transformation by itself and by its own unaided efforts, without pressure upon it by the people, of an old feudal monarchy, one of the oldest in existence, into modern Constitutionalism, not unworthy to be ranked with that of Europe and America; and this, too, by a non-Aryan race, the ancient Empire of Japan.

Overthrowing in an incredibly short time the ancient feudalism which had kept it under military



thralldom for upwards of seven centuries, and overcoming in a decade difficulties which Europe had required several centuries to surmount, the Island Empire of the East has burst upon the astonished gaze of the civilized world with the brilliance of the morning star after a long night of darkness, and has startled the nations with its extraordinary capacity for self-government and the development of constitutional and civil liberty, hitherto supposed to be the exclusive patrimony of the Aryan Race. A hereditary monarch, claiming a long line of ancestry, extending back to the days when Rome was not, before Cyrus the Persian thundered at the gates of Babylon, and when the Pharaohs were still powerful on the Nile, taking counsel only with his own people and regarding only their welfare, voluntarily and of his own accord relinquished the heritage of absolute sovereignty that had come down to him through upwards of twenty-five centuries of imperial rule, gave to his people a written Constitution based upon the models presented in Europe and America, and established a Parliament, truly representative of the people, with a responsible Cabinet, as in the Constitutional nations of Europe. And that system is now in successful operation, and Japan has taken its place among the great powers of the world.

When we consider that this island Empire of the East had for three centuries industriously secluded itself from the family of nations by the rigid exclusion of all foreigners from its territory; that only in 1854 was it brought into communication with our Western World by the appearance in its waters

of an American fleet under the command of Commodore Perry; that only in 1868 its ruler, the Mikado, resumed the actual sovereignty which had long been usurped by military chiefs and powerful clans; that within two years thereafter he had, with remarkably small destruction of life or shedding of blood, extirpated the peculiar feudal system that had dominated the country for more than seven hundred years; that in 1881 the constitutional system was proclaimed, and in the next year the first Parliament met; and that the country has taken as naturally to the new order of things as though it had come down to it from immemorial ages, it must be admitted that Japan supplies one of the most remarkable and one of the most interesting chapters in the history of Civil Liberty. We have known the Mongolian Races of Central and Eastern Asia, under leaders such as Attila, Jenghis Khan and Timur, to have more than once threatened the Aryan Civilization of the West with subjugation; but on this occasion one of those races enters into earnest competition with the Aryans for the development of Constitutional Liberty. The guns of Concord indeed have reverberated around the world.

## LECTURE VIII.

## RELIGIOUS LIBERTY AND FREEDOM OF CONSCIENCE.

THERE is one branch of our subject that remains to be considered, and it may seem strange in our day that it should require separate or special consideration. Civil Liberty without Religious Liberty and Freedom of Conscience is to us unintelligible; for with us the freedom of the conscience is the primary essential element of all Civil Liberty. And yet it would not seem to have always been so. Men who have claimed to be the special champions of Civil Liberty, and whose claim in that regard we may well admit to have been honest, have not hesitated to persecute bitterly and barbarously all who differed with them in matters of Religion. For illustration, we have to go no farther than the Puritan settlers of New England, as well as the Puritans of the English Commonwealth, which for a time displaced in England the monarchy of the Stuarts.

To the question of Religious Liberty there is both a theoretical and a practical side. Truth and Error, of course, are unalterably and forever antagonistic to each other. As we remarked in our opening lecture, Truth is ever one and immutable, Error manifold and hydra-headed. Theoretically, Truth is necessarily intolerant of Error; and this we say not only with reference to Religious Truth, but with reference to the truths of Science also, and

of all branches of human knowledge. Errors may coexist with each other, but Truth and Error may not coexist. These are axiomatic statements which we presume no man will contest. It would seem to follow from them, as a logical deduction, that, while Truth might justifiably be intolerant, Error should never be otherwise than tolerant. Yet we usually find the concrete fact to be to the contrary. The truthful and the virtuous are not always tolerant, but it is the invariable characteristic of the vicious to be intolerant. Such is unfortunately the experience of all history, and the reason of it may not be difficult to be discovered, although to enter upon that question here would take us too far away from our subject. It is sufficient that the fact is as we have stated.

It might be supposed that the accommodating Polytheism of Greece, in the time of the Selencidæ, could readily have tolerated the worship of Jehovah as practiced by the little tribe of the Jews on the hills of Palestine. It had tolerated and assimilated all the abominations of the Syrian Goddess and of the savage Moloch. And yet one of the most pathetic and at the same time most heroic episodes in the history of the people of Israel is their fierce and frantic persecution by Antiochus Epiphanes, King of Syria, on account of their religion. The polytheism of Rome under the Cæsars was capacious enough to accept as additions to it the infamous mysteries of Samothrace and Egypt, but it was unable to tolerate the simple and soul-elevating creed of Christianity and the purity of life of the early Christians. We are compelled to recognize that it



was only Error's undying hatred and intolerance of the Truth that instigated the ten savage persecutions of Christianity carried on by the Roman Emperors for the greater part of three centuries.

When Christianity triumphed in the triumph of Constantine the Great, it did not seek to retort upon its persecutors for the wrongs which it had suffered from them. Its triumph was a proclamation of religious liberty for all persons within the Roman dominions, and there was practical freedom of conscience for all the Roman world. Unfortunately it was found impossible always to maintain this condition of universal tolerance; and when the heresies of Arius and Nestorius, and subsequently that of Macedonius, and the Iconoclastic heresy of the Isaurian Emperors of the East arose, they were all prolific of the spirit of persecution; and it is perhaps no wonder that the adherents of orthodoxy frequently retorted upon the abettors of schism and heresy for their intolerance.

In the contest, to which we have adverted, of the Roman Civilization against the Northern Barbarians and their descendants to recover its lost ground, the Christian Church from the beginning took a most prominent part. Indeed, the contest for a long time was waged mainly and almost exclusively between the Church and the Barbarians; for all that was left of the Roman Civilization and of Civil Liberty became identified with the cause of the Church, and the contest of the Roman Civilization against Feudalism was equally the contest of the Church against Odinism and the fierce intolerance of the Northern superstition. The conquering Bar-

barians were all either pagans or professors of the bastard Christianity of Arianism which had been industriously disseminated among them. There were no orthodox Christians among them: and such Christianity as they had was deeply tainted with the savage bigotry of the pagan creed which they never wholly abandoned. It was easy, therefore, for them to combine the practice of persecution, natural to the fanatical sectarian, with the practice of murder and pillage natural to the Northern Barbarian. And it was with these practices that the Christian Church was called upon to contend for the first three or four centuries after the conquest of the Roman Empire by the Barbarians. Religious Liberty was as much involved in the contest as Civil Liberty and the Roman Civilization.

Even after the Arian heresy had disappeared, as it gradually did, and all Central and Western Europe had given its adhesion to orthodox Christianity, the contest for Religious Liberty did not cease. It went on in other forms. The history of the Middle Ages is full of constant controversy and conflict between the Church and the State. At one time it was a question of quarrel between the Popes and the Emperors of Germany over the subject of investiture—that is, as to which of the two should nominate and appoint the Bishops to their respective dioceses. At another time it was a fierce battle, made more fierce by interdict and excommunication, between the Popes and the Kings of France over the sanctity and inviolability of the marriage relation, which the successors of Clovis and Charlemagne and Hugh Capet had the habit of frequently

disregarding. Again, on other occasions, it was a contest of the Popes with the Kings of England in regard to the characteristic Anglo-Norman tendency of these latter to depredate upon the Churches and the monasteries, and to plunder them of their revenues. The contest was multifarious, and in one shape or other almost continuous. We do not hesitate to assert that the cause of the Church was the cause both of Civil and of Religious Liberty.

This statement is undoubtedly in contravention of the assertions of the great majority of English and American writers—at least of those of past ages—for those of the present would seem to be either more just or more intelligent. But the American writers in this matter have been generally the blind imitators and followers of their English predecessors, whose hatred for the Roman Civilization, for the Latin Church as the great conservator of that Civilization, and for the Papacy as the consistent opponent of the system of Feudalism of which they are the slavish sycophants and defenders, has wilfully blinded them to the truth, and involved them in a gigantic conspiracy to represent the infamous Feudal System as the parent of Civil Liberty. Their falsehood and their malice are well illustrated by a writer, whose eminent qualities in other respects have entitled him to a high place in law and literature and the esteem of his countrymen, Sir William Blackstone, the well-known author of the “Commentaries on the Common Law of England.” Blackstone, speaking of the Feudal System, says that it was “a plan of simplicity and liberty.” The writer who could calmly and deliberately give ex-

pression to the opinion that the Feudal System was “a plan of liberty” might well be expected to give expression to any falsehood, however atrocious, that tended to place the Roman Church of those days in an injurious light, and his “Commentaries” are full of such falsehoods. And if a writer, whose work was of such a character as to inspire the impartiality of a calm and judicial temperament, could so far permit himself to be led astray by the bigotry and malice of the feudal classes, to whom he was called upon to cater, it is no wonder that other less informed and less impartial writers should, either through reckless negligence or wilful perversity, misrepresent the attitude of the Latin Church to the feudal States and the feudal classes of the Middle Ages.

It is very true that Church and State were almost constantly at war with each other during the Middle Ages—that is, in a war of principle. But it is utterly false that this was an unholy contest on the part of the Church to acquire supremacy over the State. That there was often unhallowed ambition among churchmen, as well as among the feudal classes, it would be foolish to deny. That Popes and Bishops often went beyond the legitimate sphere of their authority is only too true. That there were bad men, Brakespearres and Borgias, on the Papal throne, as well as on the thrones of Feudalism, and that often Bishops of the Christian Church were as much a disgrace, by their conduct, to the religion which they professed as were the robber barons of Feudalism or England’s Plantagenet Kings to the manhood which they outraged,



is no more than to say that Popes and Bishops were men with human frailties. But we are treating of the clash of institutions and of policies, not of either the individual vices or the individual virtues of the men who were engaged in the contest, although, of course, it would be most strange if, on the whole, the institutions of civilization were not illustrated by the virtues of those who sought to maintain them against the inroads of barbarism, and the evil tendencies of Feudalism by the evil actions of the monarchs and barons and their organized bands of ruffian retainers. The incidental manifestation of vice and excess among churchmen does not militate against the fact now perfectly patent to any but the most blinded bigot that only by the incessant and systematic opposition of the Christian Church of the Middle Ages to the crimes of Feudalism, and even to the very existence of that institution, was the spirit of civilization and civil liberty preserved among the nations. There was constant war in those days, and it was ever and invariably the war of light against darkness, of freedom against despotism, of the Roman Civilization against Teutonic Odinism.

Sometimes it happened that members of the feudal classes were found in the ranks of the Church, and even occupying its high places. Sometimes such men were earnest and devoted Christians. Just as frequently, perhaps more frequently, they were ambitious seekers for power and wealth, and turbulent disturbers of the ecclesiastical polity. But, in general, the ranks of the Church, from the occupant of the papal throne to the monk in his humble

cloister, were recruited from the ranks of the people, the descendants of the old Romanized populations, and not from the feudal classes, and naturally their sympathies were with the people from whom they had sprung. Hence the instinct of race, if nothing else, would have induced the Church and churchmen to espouse the popular side in the long contest for Civil Liberty.

The feudal nobles and the feudal monarchs were, as a rule, ignorant and brutal. Their occupation continued to be what that of their barbarian ancestors had been in Germany and Scandinavia, that of war and the chase. But art, literature, science, all the humanities and the amenities of life, all the elements that go to make up Civilization, they knew nothing of and totally despised. What Earl Douglas is made by Sir Walter Scott to say, in his poem of "Marmion," is characteristic of all his race, and of all the ages of feudalism :

"Thanks to Saint Bothan, son of mine,  
Save Gawain, ne'er could pen a line ;  
So swore I, and I swear it still,  
Let my boy bishop fret his fill."

They were chivalrous, it is true, at times. Chivalry was their one virtue, if virtue it was. But such chivalry was the veneering of barbarism, forced upon them, in a measure, by Christianity, and which, like their Christianity itself, they readily threw aside, as occasion dictated, to give way to their hereditary barbarian propensities.

All the education of the time was confined almost exclusively to the church, to the cities, and to what we would call the people, as distinguished

from the feudal classes. The latter had simply the organized power of the sword. It is not too sweeping a statement to make that, during the thousand years which intervened between the irruption of the Barbarians and the Discovery of America, the feudal classes gave no scholar to literature, no votary to art, no devotee to science, no adept to philosophy, not even a statesman to political economy. If there are any exceptions to this statement, they are of so unimportant a character as to be undeserving of notice. Civilization owes nothing whatever to the feudal classes, not even the architecture of their castles, nor the songs which were sung within their halls. The Troubadours and the Trouveres were of the people, and it required the scholars of Ireland, France and Italy to put into shape the rude sagas indigenous to Scandinavia. Moreover, they were unable even to administer their own rude laws and usages, so as to insure the stability of such social order as they possessed, without the aid of the Bishops of the Church.

Is it any wonder, then, that the Christian Church, the organ of Religion and the arbiter and practically sole possessor of all the education of the time, was the uncompromising enemy of Feudalism? Religion and education are both necessarily hostile to the brute force of a merely military organization. The party of the Church in the contest was therefore necessarily the party of Civil Liberty, Civilization, and the social order. The issue was very distinctly defined in Italy when the Guelphs and Ghibellines distracted that country with their contest. The party of human freedom and national

independence was always that with which the Church was affiliated: German Imperialism, Teutonic Feudalism, and national degradation were on the side of its opponent. The republican free cities of Italy grew up in the shadow of the Church, and with the assistance of its great influence. Curiously enough, the little Republic of San Marino, amid the fastnesses of the Apennines, the oldest of existing Republics, owes its foundation, as well as its name, to an humble religious of the Latin Church. Andorra, in the Pyrenees, the next in seniority, has had for its chief executive officer, from time immemorial, the Christian Bishop of the neighboring city of Urgel. And history tells us how sincerely and earnestly Christian the sturdy Switzers were who enforced their freedom against their feudal rulers, and how the Christian Church has always extended to them its warmest sympathy. With them the Church never had contest, as it had with the feudal powers of Europe.

We have stated that the Barbarians, who overthrew the Roman Empire and on its ruins established their feudal systems, were generally content to leave the cities, especially the great cities, unmolested, after perhaps plundering them, and with the exaction merely of some stated tribute. In these cities the Bishops had established themselves and the schools which they maintained, and usually there was a bishop for each city of considerable size. In fact, in England, the very word *city*, as distinguished from town or borough or other settlement, was defined to be a bishop's see. The bishops always made common cause with their fellow-citizens



against the feudal nobles. In the episcopal schools was retained whatever of science or literature had escaped the fury of the Barbarians. There the Roman institutions, the Roman Jurisprudence, and the Roman spirit of Civil Liberty were taught with the Christian Scriptures, and perpetuated. The guilds, wherein the denizens of the cities in those days banded themselves for self-protection against the exactions of the feudal rule, were always under the immediate sanction of ecclesiastical authority, and with the aid of that authority were enabled to maintain their liberty and immunity.

Peculiar outgrowths of the Christian Church in the Middle Ages were the numerous Religious Orders that arose, and the numerous monasteries that were established by them, in which literature was cultivated, the ancient classics of Rome transcribed and studied, and the history of the Bible, with its lessons of individual civil liberty, so opposed to the degrading serfdom of the Feudal state, received elaborate consideration. Around these monasteries retainers came, and settlements grew up of those who sought protection from the lawlessness of the feudal barons, and the monastery invariably became the rival and the antagonist of the feudal castle in the defence of the people against feudal tyranny. The fact is patent upon every page of the history of the Middle Ages. Ignorance, malice and bigotry have been accustomed to sneer at the monks and monasteries, to ridicule them for their little learning, and to jeer at them for their supposed indolence and simplicity of life. It may be sufficient to say, in answer to this, that only ignorance, malice

or bigotry will indulge in such charges at this day, when every impartial and well-informed student of history knows that to the monks and monasteries, and to the Church which they represented, we owe the preservation of all the ancient literature, art, science and civilization that have come down to us, and that if it had not been for these monks and the priesthood of the Christian Church, Europe might have been sunk in a dismal barbarism, from which, perhaps, it would have been impossible for it to have emerged. Abuse of the monks at the present day is an evidence of malignity that places those who indulge in it on a level with the savages with whom, in their own day, they had to contend. These monks made the desert blossom as the rose, and if they did not always reach the high ideal which their original founders designed for them, we have only to say, as we said before of the Popes and Bishops of the Church, that they were only human. We should never forget that it is to the Religious Orders of the Middle Ages that we owe the first distinct and positive suggestion of government by written constitutions, and, therefore, of the specific restriction of power in the interest of Civil Liberty.

It may be remarked, in this connection, that it was to the efforts of the Church to educe some useful purpose out of the Feudal System that was due the establishment of the Military Religious Order of St. John, more commonly known as the Knights of Malta, the Knights Templars, the Order of the Knights of Calatrava in Spain, the Teutonic Knights of Saint Mary in North Germany and Poland, and

other similar organizations, which for a long time presented a strong bulwark for Europe against the assaults of the Saracens, the worst enemies of Liberty and Civilization whom the world has ever known.

But perhaps to the great Universities of Europe in the Middle Ages, Salerno, Bologna, Padua, Salamanca, Paris, Oxford, more than to any other one one cause, at least during the second half of the period usually so designated, we owe the perpetuation of our Civilization and of the principles of Civil Liberty. All of these institutions were veritable republics in themselves, almost independent of the feudal monarchies and of the feudal authorities around them. They made their own laws, had their own executive officers elected by themselves, and their own tribunals for the adjudication of the controversies which arose within them; and they propagated the principles of civil liberty and human equality, not only by preaching and example, but likewise and perhaps even with greater potency by breaking down the barriers between the nations which Feudalism had sought to erect, and by bringing together from all the nations to these shrines of education students who soon became bound to each other by the bonds of a common brotherhood. The influence of these Universities in counteracting the evil influences of the Feudal System was exceedingly great. But, as in the case of the monasteries, so also with reference to these great Universities of the Middle Ages, it was at one time the fashion with self-sufficient and arrogant ignorance to decry the education which they

gave, and especially the scholastic philosophy which they chiefly taught. No intelligent man will now venture upon any such impertinent criticism.

Now to the Christian Church of the Middle Ages we owe the establishment of each and all of these institutions, without a single exception. They were all founded, endowed, and organized by churchmen, and under ecclesiastical influence. All of them received their charters from the Popes. If kings and nobles sometimes aided them with donations, as occasionally they did, it was only in a sporadic manner or for some special reason. It was rare, indeed, that the monarchs of the Age of Feudalism, and rarer still that any of the feudal nobles, were inspired with the liberal and generous spirit of aiding the Universities in their work of education and civilization. Their feelings rather were such as have been indicated in the lines already cited from Sir Walter Scott concerning Earl Douglas. It was from the Church, and practically from the Church alone, that the Universities derived their existence and their support.

More by its general purpose, perhaps, and the general scope of its teaching, by its efforts to civilize the barbarian, to restrain feudal rapacity, and to humanize the social system, than by any one distinctive act or series of acts, did the Church of the Middle Ages strive to promote the cause of Civil Liberty. But distinctive acts are not wanting, if such be sought in the history of the time. We need not cite more than that which is so prominent in English history, and to which we have already more than once referred—the extortion of Magna Charta



from King John Plantagenet. That is generally and rather vaguely represented to have been the act of the English people. But the people, as such, had no part whatever in the transaction, if we except such moral support, which seems not to have been very great, as the City of London gave to the movement. More correctly, the Great Charter has been stated to have been wrung from King John by the barons and clergy. But it appears plainly that some of the most powerful barons, and possibly even a majority of the feudal class, was on the side of the monarch in the controversy. The Earl of Pembroke, the most powerful nobleman in England at the time, was in command of King John's forces on the field of Runnymede. The recitals of the famous document itself, and the authentic chronicles of the time, show conclusively that the ecclesiastical authorities were the principal instruments in its procurement from the reluctant tyrant. Stephen Langton, the Cardinal Archbishop of Canterbury, was confessedly the leader of the movement against King John, and the master-mind in the direction and management of it; and Magna Charta was beyond all question mainly, if not exclusively, the production of his pen and the work of his hands. Next to him in the movement was Pandolfo, the Papal Legate; and both were ably and powerfully assisted by the Bishops of Winchester, Bath, Lincoln, Worcester, and others, and even by the Archbishop of Dublin, in Ireland, all of whose names appear in the document as those of the persons most instrumental in its promulgation. If, therefore, Magna Charta is, as has frequently been

claimed, the foundation of English liberty, that foundation is justly due to the Roman Church and to its ecclesiastical authorities in England.

No person who is even moderately familiar with the history of the Middle Ages, and who does not receive his opinions at second hand from partisan English writers, will now question for a moment that the whole course of the Latin Church in all its contests with the feudal monarchs of Europe was consciously and purposely in the interest of Civil Liberty, and in defence of popular right, individual freedom, and the sacred cause of humanity. It will be quite apparent that it could not well have been otherwise, when we remember that the Christian Church and the Christian Religion are based upon the theory of the freedom of the human will and individual responsibility, and that upon the same principle of individualism true civil liberty is founded. It is the theory of our democracy that the state was made for the individual, not the individual for the state; and that State socialism, whether in the guise of an irresponsible or uncontrolled majority, or in that of a military despotism such as the Feudal System everywhere was, is equally inimical to human freedom. If, in the course of the contest with Feudalism, the Popes and the ecclesiastical authorities of the Latin Church seem to have occasionally exceeded the limits of moderation, it should be remembered that only by interdiction and excommunication and the severest course of procedure could ruffians like John Plantagenet, Henry IV. of Germany, Frederick Barbarossa, the Louises, the Lothaires, and the Berengiers of that

evil time, have been restrained from their outrages upon civilization. It is but natural that there should have been occasional excesses; but in teaching to the oppressed nations the lesson which they sadly needed, that there was a limit to monarchical tyranny, aristocratic insolence, and feudal arrogance, the departures from forbearance were rare indeed on the part of those who upheld the cause of civilization.

The claim that the purpose of the Church in its frequent contests with the temporal power during the Middle Ages was intended only to establish its own ecclesiastical despotism is, in the light of what has been stated, an absurdity. That purpose, if it existed, might well have been subserved by an alliance with the temporal power and its absorption into a theocracy, as in the case of Mohammedanism in the East. Assuredly, persistent antagonism to the excesses of the temporal power was the worst way possible whereby to secure such a result. Nor is there any evidence whatever that the Latin Church of the Middle Ages sought in any manner to exercise a despotic influence over the consciences of the people. After the disappearance of the Arian heresy, the European nations with great unanimity had adopted the doctrines of Orthodox Christianity as taught by the Latin Church, and that unanimity remained substantially unbroken until the Lutheran Reformation. There was, therefore, no occasion for the denial of the freedom of conscience; and the sporadic cases of John Wyckliffe, John Huss, and Arnold of Brescia, and others who might be mentioned, can scarcely be regarded as exceptions to

the rule. Nor is the so-called persecution of the Albigenses and the Vaudois in Savoy and Provence to be regarded as an exception. If one-half of the atrocious crimes charged against these sectarians be justly charged against them—and the charges were preferred by the civil authorities, not by the Church, and are certainly sustained by abundant testimony—their extermination from the face of the earth, rather than their persecution, would have been justifiable. The story of Sodom and Gomorrah had its counterpart in the history of the Albigenses. We have been compelled in our own day and in our own republic to decree the suppression of the infamous polygamy of Mormonism by the stern hand of the law, notwithstanding that this practice was distinctly sanctioned and established as the corner-stone of that very peculiar religious system. Religious liberty and freedom of conscience do not consist in the toleration of practices antagonistic to the elementary principles of our civilization; and we might as well sanction the horrid cruelties of Moloch as the practices charged, whether justly or unjustly, against the Albigenses. The Church undoubtedly denounced those practices, as it was incumbent on it to do, just as all the Christian Churches of our day have denounced the iniquities of Mormonism; but in the case of the Albigenses, as in the case of the Mormons, it was the civil authorities that undertook the detection and prosecution of the charges.

The Lutheran Reformation made an era in the history of the human race. It inaugurated a movement which, from small beginnings, grew to such



dimensions as to involve all Europe in war and turmoil; to array nation against nation, province against province, city against city, brother against brother; to cause some of the fairest provinces of Europe to be devastated with fire and sword; and to arouse a spirit of persecution almost fiendish in its malignity and without parallel in history, except in so far as the persecutions of Christianity by the Roman Emperors be regarded as furnishing a parallel. Without stopping to answer the question whether such results be not sufficient in themselves to condemn the movement, or that other question whether there was not corruption in the Church that justified the most vigorous movement for its eradication, we must confine ourselves here to the inquiry how far this movement conduced to the establishment of Civil and Religious Liberty. Inasmuch as the bitter antagonisms aroused by the Reformation are yet in active operation, and the prejudices of a blind and unreasoning sectarianism are powerful to distort the processes of the human intellect and to warp the human judgment, it is not easy to enter upon a consideration of this subject without encountering such prejudices. But certainly there are some facts in the history of the movement upon which we can agree, and from which the conclusions to be drawn will commend themselves to the mind that is disposed to be impartial, notwithstanding the strong partisan bias of sectarianism that may stand in the way.

That the so-called Reformers, Luther, Calvin, and their associates—whom, of course, it is a patent mistake to call Reformers, since they ended by

wholly abandoning the Church which they claimed in the first instance merely the purpose to reform—did not propose to establish Liberty, either civil or religious, except for themselves to conduct their movement without molestation from those against whom the movement was directed, is very clear from the whole tenor of their history. If we give them full faith and credit for sincerity of intention and honesty of purpose, we must assume that their sole and only purpose was to establish what they claimed to regard as the evangelical truth in the place of what they designated as the errors, the superstitions, and the corruptions of Rome. They did not pretend to establish freedom of conscience. They did not allow to those who differed from them the credit of sincerity. They claimed themselves to be the sole possessors and preachers of evangelical truth, and they brooked no opposition to their teaching and tolerated no dissent from their opinions. For such dissent John Calvin caused Michael Servetus, co-reformer with him, to be publicly burned in Geneva at the stake; and John Knox, and Martin Luther, and the rest of them—all, we believe, except Melancthon, whose kindly nature and spirit of moderation always counselled against extreme measures—never hesitated, when they came into possession of the temporal power, as they all did or sought to do, to use that power, not only against their opponents of the Roman Church, but equally and sometimes even more fiercely against other seceders from that Church who happened to espouse dogmatical theories different from those adopted by themselves. Neither in theory nor in

practice did they set up the principle of religious liberty of freedom of conscience. On the contrary, they distinctly repudiated any such position on their part. Their sole and only claim was to restore the purity of evangelical truth, obscured, as they alleged, by the corruption of the Latin Church. Of course, they claimed the right for themselves to be free to insist upon their theories, but beyond this they never extended the idea of freedom of conscience. Their freedom of conscience, in other words, was freedom for themselves and their followers from opposition and attack by the adherents of Rome; but coupled with the right to compel the adherents of Rome and all others, by force of arms even, if necessary, to accept the truth of Christianity, according to their understanding of that truth.

In pursuance of this idea, when most of the States of North Germany, Denmark, Sweden, Norway, Holland, Scotland and England had become imbued with the tenets of the Reformers, and the civil authorities of those countries found it convenient to join in the revolution against the Roman Church, they, one and all, established State Churches, made the ecclesiastical organization a part of the machinery of the State, precisely as the ancient pagan nations had done, and pursued with unrelenting rigor and merciless cruelty both those who would have adhered to the Roman Church and those who would have preferred other dissentient theories. By such persecution all dissent was extirpated from most of the countries mentioned; and in most of them at the same time all Civil Liberty

was ruthlessly crushed out, and absolutism was established. And it is a peculiar fact that, wherever the Protestantism was most rigid and exclusive, the absolutism in government became most marked. And it is also a fact that, for the three centuries during which this rigid rule of Protestantism lasted, and until it came to be broken by the commotions resulting from the French Revolution, the despotic authority of the monarchs in civil matters was not relaxed. The States of North Germany, Denmark, Sweden and Norway, at the period of the Reformation and in consequence of that Reformation, became absolute and despotic monarchies, whereas before that there had been a great relaxation of feudalism in all of them, and there was no trace whatever of civil or religious liberty in any of them for upwards of three centuries. We know what bitter persecutions took place in Holland, Scotland and England, and what disgraceful penal laws were enacted in all those countries to suppress dissent and to enforce conformity to the ecclesiastical establishments provided by law, and that not until the present nineteenth century were those infamous laws repealed or modified. It may be said, in fact, that they have not yet been entirely swept away.

Now, from all this it is very clear that, whatever of justification there may have been in the Lutheran Reformation; whatever of truth there may be in Protestantism; whatever of corruption there may have been in the Roman Church, and even upon the assumption that the Reformers may have been entirely right in their position, the Reformation certainly did not establish religious liberty, and did



not pretend to establish it; and it is amazing that, in view of the uncontroverted and undeniable facts, the pretence should ever have been indulged by any intelligent person that the Reformation had any such result or effect. The plain and palpable truth is, that the immediate result of the Reformation was to establish a system of religious intolerance such as had not been known before in the world; to restore and strengthen the forces of feudalism and despotism; and, in the matter of civil and religious liberty, to put the world back at least three centuries. It is the result, therefore, either of gross ignorance or of deliberate and wilful perversion of the truth to allege that the Lutheran Reformation was productive either of Civil or Religious Liberty. Least of all did it promote religious liberty, of which its adherents were for three centuries the most persistent and unrelenting enemies. Even in free Switzerland, where, from their use of liberty for three centuries, more tolerance might have been expected, the fires of religious persecution broke out with the greatest intenseness wherever the Reformation succeeded in effecting a foothold. Nor is it any answer to this exposition of the plain truth of history that the Southern nations of Europe which continued to adhere to the Church of Rome at the same time or soon afterwards entered upon a similar career of intolerance and despotism. It would not be difficult to trace this result to the same cause which operated in the northern countries.

It was not until the first outburst of religious frenzy and savage intolerance had expended itself in its own violence, after the lapse of about a cen-

tury of fierce and cruel persecution, that in those nations of Europe in which the adherents of the different creeds continued to co-exist, as in France, Germany, Holland and England, men of moderation and humanity sought to inculcate the doctrine of forbearance and tolerance. But the spirit of bigotry and hatred was too powerful then, and for a long time afterwards in Europe, to permit the practical application to any great extent of the gospel of moderation upon that continent. It was reserved in the councils of Divine Providence for our own America, which had already been marked out as the home of civil liberty and as a place of refuge for the oppressed of Europe, to proclaim and to put into practical operation the principles of religious liberty also, without which our civil liberty would have been a delusion and a mockery. To George Calvert, Lord Baltimore, the founder of the Colony of Maryland (A.D. 1632), and Roger Williams, founder of the Colony of Rhode Island (A.D. 1643), the honor is due of the first establishment of religious liberty and freedom of conscience as a part of the fundamental polity of the State, not only in our Western World, but in all the modern world; and their noble example was followed nearly fifty years afterwards by William Penn, in the foundation of his Colony of Pennsylvania (A.D. 1681). These three must justly be regarded as the fathers of religious liberty, and their three colonies as the seats wherein first was nurtured and exemplified in practice the principle of the toleration of all religious systems not antagonistic to our Aryan Civilization, as well as their equality before the civil law.

It is true that a serious check was given to the movement when, in the land of its origin, the Colony of Maryland, under the influence of the malignant spirit of the English Revolution of 1688, the Protestant Colonists seized upon the Colony, temporarily ousted the Lords Proprietors from their proprietary rights, and proscribed their religion and the religion of their fellow-colonists, who had invited them to their shores. A more disgraceful act of perfidy, treachery and ingratitude does not disgrace the annals of the human race than this infamous proceeding. But fortunately it only checked the movement; it did not prevent its gradual growth. And when the malign influence of the country, from which the suggestion of such base ingratitude had emanated, was brought to an abrupt termination by our Declaration of Independence, the minds of men were ripe for the general acceptance of the principles of Calvert, Williams and Penn.

The founders of our Constitutional System of government embodied those principles in the Constitutions of all the States; and when the Federal Constitution came to be formulated, the work had been so well done in the several States that it was not deemed necessary by the framers of that instrument to make any provision therein in regard to religious liberty and freedom of conscience, further than to enact, in the Third Section of the Sixth Article, that "no religious test shall ever be required as a qualification to any office or public trust under the United States." But the people seem not to have been entirely satisfied with this recognition of the principle; and the very first of the

Ten Amendments proposed simultaneously with the adoption of the Federal Constitution and soon afterwards unanimously adopted, and which have always been regarded in the nature of a bill of rights, provided that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." As already intimated, similar provisions had previously been inserted in the Constitution of the several States.

It has been heretofore noted that, in the first charter for the establishment of the Colony of Virginia (A.D. 1606), the evil spirit of intolerance was sought to be introduced into the New World in the provision that none but members of the Established Church of England should be admitted into the Colony, a provision which we find to have been rigidly enforced on more than one occasion, and notably when some Puritan settlers had attempted to establish themselves in Virginia and were summarily expelled and took refuge in Maryland. But if, in the days of intolerance, Virginia was the first colony in America to establish the odious system of intolerance and of persecution on account of religion, credit is justly due to her for being the leader also in the general movement for religious liberty at the time of the separation from England. The illustrious Thomas Jefferson, to whom perhaps more than any other statesman of the time, scarcely excepting even George Washington himself, we owe the final fashioning of our republican institutions, was the principal author of the Bill of Rights and Constitution of the State of Virginia, adopted in June, 1776, some days before the promul-



gation of the Declaration of Independence at Philadelphia, and which afforded the substantial groundwork for a great part of the Federal Constitution formed eleven years afterwards. The Sixteenth Section of this Bill of Rights was in these terms:

“That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.”

Embodied as fundamental principles in our organic laws, both State and Federal, and intended to give practical effect in civil life to the precept of Christian charity, and to that other precept likewise which Incarnate Wisdom gave to the unprincipled adherents of a corrupt and factious Judaism who sought to ensnare him as between the hostile claims of the authorities of the time—“Give unto Cæsar the things that are Cæsar’s, and unto God the things that are God’s”—these constitutional provisions of ours are intended to insure to us the completion of the policy of Lord Baltimore and of the noble edifice of Civil Liberty.

But we are not to understand that we have absolutely secured religious liberty and freedom of conscience. By sad experience we know the contrary. Constitutions do not necessarily destroy passions and prejudices. There are those in whom yet survives what I have so frequently designated as the spirit of Odinism, the savage and bloodthirsty spirit of

the pagan fanaticism. The demon of intolerance yet often enough breaks forth from the restraint sought to be imposed upon him, and ignorance and fanaticism too frequently ignore the duty of loyal adherence to constitutional principle. But it is something to have emphasized in fundamental law the eternal sense of justice implanted in the consciences of all right-minded men, and to have substituted the principle of forbearance for the brutal intolerance of persecution.

Nor are we to understand, on the other hand, that our Constitutional guarantees absolutely divorce our civil institutions from all connection with religious belief and religious observance, and convert our governments into systems of organized atheism or agnosticism. Our governmental organization is Christian. Its morality is Christian, with a tolerance for the morality of Judaism, upon which it has been founded. The basis of its morality is to be found in the Ten Commandments and in the Sermon on the Mount. Its Common Law includes the enforcement of the most salient requirements of the Christian Religion. It enforces the Christian Sabbath. Call is made upon the God of Sinai and of Calvary to attest the true and faithful performance of its obligations. And if in some of its transactions, notably in its ordinances on the subject of marriage and divorce, it is not wholly in accord with Christian ideas of morality, it is only a proof that man is still a most imperfect being, never the equal of his ideal, never wholly filling the measure of the rule which the law of his nature and the divine spirit implanted in his soul require him to adopt as the standard of his action.

## CONCLUSION.

It is time that I should bring these lectures to a close. In doing so I may ask the question whether the contest of the ages, the struggle for civil liberty, the war of Ormuzd and Ahriman, the war of good and evil, is at an end. Far from it. The war yet rages, and will no doubt continue to rage until the day of

“The last of human mould  
That shall Creation’s death behold,  
As Adam saw her prime.”

It is true that everywhere throughout the civilized world the people have reconquered their heritage of freedom from the usurpers, the feudalists and the absolutists, who would have kept them forever under the dominion of brute force. But their victory is nowhere complete. Apart from the fact that only the Aryan nations, or a large part of them, have recovered their birthright, and that outside of the pale of the Aryan Civilization only one nation, Japan, out of all the populous races, including two-thirds of the people of the globe, has as yet entered upon a career of civil liberty, the success that has been accomplished has only placed them in the possession of the citadel of liberty. Their struggle now is to retain their conquest against their insidious foes, and to use that conquest well, so that the results of it may be transmitted unimpaired to pos-

terity. It has been well said that "eternal vigilance is the price of liberty," and we must realize the fact that the ordeal of incessant vigilance is a more trying ordeal than that of the fiery energy of battle. Feudalism and absolutism have been overthrown; all the nations have established constitutional guarantees; the cause of civil liberty is everywhere triumphant; and yet we have the remnants of feudalism and absolutism still struggling to entrench themselves behind the broken barriers of their unhallowed privileges.

But it is not so much from enemies without as from enemies within the citadel of freedom that future danger is to be apprehended. The socialist, the anarchist, the assassin, are worse enemies of Civil Liberty than the feudalism and the absolutist. Ominous was the simultaneousness of the popular uprisings of 1848 in Europe. They gave evidence that a new and dangerous element had entered actively into European politics, and that secret oath-bound organizations had seized upon the revolutionary movement. There had been intimation of the existence of such organizations in the agitation that precipitated the French Revolution. There was no doubt of their effective influence in the control and management of the revolutions of Spanish America, whose so-called republics their intrigues and intestine conflicts have ever since kept in constant turmoil. But on a larger scale than ever before they made themselves felt in the European Revolutions of 1848; and it is beyond doubt that since that time they have been potent in shaping the politics of the various European nations. It is



unfortunate that their attacks have been directed not only against the thrones of monarchs, but likewise against the altars of religion. For these organizations are thoroughly atheistical in their tendencies. They would tear down the whole social fabric, and would reconstruct it, if they would reconstruct it at all, upon the lines of the demon republic of Robespierre. The weapon with which they would mainly perform their work would seem to be the dagger of the assassin. As we have said, they have kept Mexico and South America in almost constant turmoil; they have controlled the French Republic in the interest of atheism; and if thus far Parliamentary government in the other countries of Europe has not fulfilled the sanguine expectations of its friends, it is mainly because these secret organizations, through their lodges, have controlled the Parliaments. They have even invaded our own country, where there is absolutely no justification for their existence. The deadliest struggle yet before us in the cause of Civil Liberty is with these secret organizations; and it will be well if they do not drive us into the arms of military despotism to effect their extermination, as Hulaku, the Tartar, effected the extermination of the Mohammedan Ismaelian Assassins, who kept both Europe and Asia in awe of them for several centuries during the Middle Ages.

Next to secret conspiracy, State socialism is the worst enemy which Civil Liberty has to fear to-day. The doctrines of socialism, communism, agrarianism, and all the similar theories of social polity with which so many persons, ignorant of the expe-

rience of the past, would again afflict and disturb the social order, are as fatal to Civil Liberty and constitutional government as is the worst form of Cæsarism. Indeed, Cæsarism is the invariable refuge of society from such intolerable violations of individual rights as are involved in all these theories. It behooves us earnestly to defend the cause of liberty against them and their promoters.

In the words of England's greatest Poet Laureate, we are "the heirs of all the ages, foremost in the files of time;" and the heritage, which it has been ours to receive from the men who founded our constitutional and civil liberty, it is our sacred duty to transmit unimpaired, and even enlarged, to those who come after us. To set before you the value of that heritage, its origin and development, and the struggle whereby it has been required to be redeemed, and thereby to induce our higher appreciation of it, has been the purpose and effort of these lectures. What I called in the beginning God's last and best gift to man, free will, has become crystallized in social life and governmental policy as Civil Liberty, renewed to man by the revelation of Jehovah on Mount Sinai, and confirmed by the Redeemer on the Mount of Olives. The deposit of Civil Liberty and religious truth has been equally consigned to us, and we should sacredly guard both as our heritage. If we abuse both, as Israel did, we will share the fate of Israel. Unfortunately we have it in our power, as Samson had, to tear down the edifice around us and to bury ourselves and our posterity in its ruins. But to preserve the temple, to sustain it, to perpetuate the

consecrated edifice—this requires earnest, sustained, heroic effort. If in hours of political despair and darkness—and, unfortunately, such hours come often enough—any memory of the contest, such as I have essayed in these lectures to picture it to you, will come to nerve you to do your duty in the battle for justice, truth and right—for the cause of God and man—for true Religion and true Civil Liberty, which are one and inseparable—it may be that what I have uttered here will not have been uttered in vain.























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